Vol. II.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. 33.

MINNESOTA STATE LIBRARY

GEORGE DESLIONS, W. C. PERRY, ADMINISTRATOR OF KATE M. PERRY, ET AL., PETITIONERS,

vs.

LA COMPAGNIE GENERALE TRANSATLANTIQUE, OWNER OF THE STEAMSHIP "LA BOURGOGNE."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 11, 1908.
CERTIORARI AND RETURN FILED AUGUST 3, 1908.

(20,253.)

DISTRICT COURT OF THE UNITED STATES, 4043

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, as owner of the Steamship "LA BOURGOGNE" for Limitation of Liability,
Petitioner-Appellant,

4044

GEORGE DESLIONS, W. C. PERRY, as Administrator; PAULINE HENUY, as Administratrix; HENRY HYER KNOWLES, as Administrator; LOUIS DELFONTI, HENRY CIRRI and JOSEPHINE CHANUT,
Claimants-Appellees.

STATEMENT.

4045

A FULL STATEMENT of this case is printed in the Appeal Record in the proceedings in which the Claimants are Appellants and the Petitioner herein the Appellee. This statement, therefore, contains only the proceedings not set forth in the other record.

1905. Feb. 7. Filed affidavit and order to show cause why petition should not be dismissed. Memo. Brown, *J.*

1905. Feb. 7. Order on same.

4046 1900. Oct. 15. Filed exceptions to claims of W. C. Perry, as administrator, George Deslions, Charles Roballi, Pauline Henuy, administratrix; Adrian Molinari, Irene Cesere, administratrix, and John Perry, as next of kin, *et al.*

1900. Dec. 10. Filed deposition of John Perry.

1900. Dec. 22. Filed order denying motion of Nov. 20.

1900. Dec. 28. Filed and entered order denying motion to compel claimants to prove claims, etc.

4047 Received commission from Washington, not executed.

1901. Mch. 12. Received testimony *de bene esse* Sallie M. Perry and W. C. Perry.

1901. June 15. Filed affidavits and order to show cause and order denying motion for commission and for trial, etc.

1902. Mch. 14. Filed notice of motion and order opening default and allowing the S. S. White Dental Co. to file claim.

4048 1903. Mch. 14. Filed notice of appeal (Pauline Henuy, admx.).

Filed notice of appeal (W. C. Perry, adm.).

Filed notice of appeal (John Perry, adm.).

1903. Oct. 20. Filed exceptions to order of June 20, 1903.

1903. Oct. 29. Filed and entered order for the examination of J. Gold, etc., and denying petitioners application to open case.

1903. Nov. 24. Filed affidavit and notice of motion for order directing Commissioner to reopen trial and take certain testimony. 4049
Filed affidavits of R. D. Benedict.
Motion denied.
Filed and entered order denying motion to reopen reference.

1903. Dec. 3. Filed exceptions to order denying motion to reopen reference.

1904. July 12. Filed exceptions to order of June 30, 1904.

1904. July 29. Filed exceptions to motion of July 12, 1900. 4050
Filed exceptions to motion of July 14, 1900.
Filed exceptions to motion of Oct. 16, 1900.
Filed exceptions to motion of Oct. 25, 1900.
Filed exceptions to motion of Oct. 27, 1900.
Filed exceptions to motion of Oct. 25, 1900.
Filed exceptions to motion of Nov. 3, 1900.
Filed exceptions to motion of Nov. 12, 1900. 4051
Filed exceptions to motion of Dec. 22, 1900.
Filed exceptions to motion of Dec. 28, 1900.
Filed exceptions to motion of May 13, 1901.
Filed exceptions to motion of June 15, 1901.
Filed exceptions to motion of Oct. 22, 1901.

4052		Filed exceptions to motion of Mch. 19, 1902.
		Filed exceptions to motion of July 19, 1904.
		Filed exceptions to motion of July 25, 1904.
	1905. Jan. 10.	Filed Petitioners notice of appeal.
		Filed Petitioners petition for appeal.
		Filed Petitioners citation on appeal.
		Filed Petitioners assignment of error.

4053

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE,
4054 owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

SIRS:

Please take notice, that upon the annexed affidavit of Edward K. Jones, verified the 16th day of November, 1900, and upon all the papers and proceedings in this cause, we shall move this Court at a Stated Term thereof to be held in the United

States Court House in the City of New York, on 4055
the 20th day of November, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, for an order directing that the claimants set forth in the said affidavit and classified as groups "First" and "Second" therein, shall proceed to prove and establish the validity of their respective claims before the Commissioner heretofore appointed herein, and that the said claimants and their proctors be ordered not to call as witnesses or examine by deposition, or otherwise, the captains and other officers of the petitioner's several steamships, nor to call for the production of any book or paper of the petitioner, by them or either of 4056
them, until the said claims are proved and established or until the further order of this Court, and for such other and further order or relief in the premises as may be just.

Dated New York, November 16, 1900.

Yours, etc.,

JONES & GOVIN,
Proctors for Petitioner.

To Messrs. BENEDICT & BENEDICT,
Proctors for Deslions and others,
No. 68 Wall Street,
New York City, and 4057

A. GORDON MURRAY, Esq.,
Proctor for Perry and others,
No. 34 Pine Street,
New York City.

4058 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4059

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

EDWARD K. JONES, being duly sworn, deposes and says: That he is one of the proctors and the advocate of the petitioner in the above-entitled proceeding.

And deponent further deposes and says that this is a proceeding for limitation of liability of the petitioner as to claims arising out of the loss of the steamship *La Bourgogne* on the high seas on the 4th

4060 day of July, 1898; that the usual monition has been duly issued, published and returned and that numerous claims have been filed as apears by the report of Thomas Alexander, Esq., the Commissioner appointed and named in said monition, and to which report deponent desires to refer as if the same were herein set forth.

And deponent further deposes and says that among the said claims are those of two groups of claimants as follows:

FIRST GROUP. 4061

(1) The claim of George Deslions, for alleged loss of his wife and child..... $50,000
And for loss of personal property 50,000
——— $100,000

(2) The claim of Antonio Molinari, for loss of his wife and two children..... 50,000
And for loss of personal property 50,000
——— 100,000 4062

(3) The claim of Charles Rabolli, for loss of his wife and child 50,000
And for loss of personal property 50,000
——— 100,000

(4) The claim of Adrian Hummel, for damage resulting from the death of his wife and two children..... 50,000

(5) The claim of Irene Cesere, as Administratrix of Guiseppe Cesere, for loss of life 25,000

—All of the claims in this group are represented by Messrs. Benedict & Benedict, proctors for the claimants. 4063

SECOND GROUP.

(1) The claim of Pauline Henuy, as Administratrix, etc., for loss of life $50,000
For loss of money..... 2,426
For loss of personal effects 1,258
——— $53,684

(2) The claim of W. C. Perry, as Ad-

4064 ministrator, for loss of personal effects and other property of Florence Perry 1,200

(3) The claim of W. C. Perry, as Administrator of Sadie Perry, for loss of property 1,200

(4) The claim of W. C. Perry, as Administrator of Kate M. Perry, for loss of personal effects and other property 5,400

(5) The claim of John Perry, as next of kin, etc., for loss of personal effects and other property 800

4065

All of this group of claimants are represented by by A. Gordon Murray, Esq., proctor for the said claimants; and deponent desires to refer to each of the said claims of both groups on file as if the same were herein set forth at length.

And deponent further deposes and says that he is advised and believes that no cause of action whatsoever exists in favor of any of the aforesaid claimants for loss of life; and deponent alleges that all of the said claims for alleged loss of property can only be maintained in the event that the said claimants prove that the owners of *La Bourgogne* failed to
4066 exercise due diligence to properly man and equip her and make her in all respects seaworthy prior to her departure on the voyage upon which she was lost.

And deponent further deposes and says that exceptions to all of the said claims have been duly filed in Court and referred to the Commissioner herein.

And deponent further deposes and says that as regards the above-mentioned claim of George Deslions for alleged loss of life of his wife and child, the deponent has made diligent inquiry of the petitioner's agents and finds that no such persons as

the wife and child of the said Deslions took passage 4067
or were on board of the said steamship and that no bill of lading, or other receipt for any property of the said Deslions, was ever issued; and the deponent, therefore, alleges that the said claim of the said George Deslions is absolutely fictitious and has no foundation whatever either in law or fact.

Deponent further deposes and says that the claim of Antonio Molinari, for loss of his wife and child, $50,000, and for loss of personal property, $50,000 (clam 2 of First Group above mentioned) is made in behalf of persons who were third class or immigrant passengers, and is so manifestly exorbitant as to raise the suspicion that the same is wholly un- 4068
founded and fictitious.

Deponent further deposes and says that the claim of Pauline Henuy (No. 1 of the Second Group above mentioned) for loss of life, $50,000, for loss of money, $2,426, and for loss of personal effects $1,258, is made in behalf of a second-class passenger, and is manifestly exaggerated and so improbable on its face, especially so far as the loss of money and personal effects are concerned, as to raise the suspicion that the same is largely, if not wholly, fictitious.

Deponent further deposes and says that the claim of Charles Rabolli (No. 3 of First Group above men- 4069
tioned) for alleged loss of his wife and child, $50,000, and for loss of personal effects, $50,000, is based upon second-class tickets or contracts of passage and is manifestly so exorbitant as to raise the suspicion that the said claim is fictitious also, especially so far as the loss of any considerable amount of property is concerned.

Deponent further deposes and says that he has made inquiry of the agents of the petitioner and finds the fact to be that there were 84 first-class passengers on said steamer *La Bourgogne* when she

4070 was lost, all of whom perished, and that out of that total claims have been filed in behalf of only 7 of said first-class passengers for loss of life, and out of these claims two are barred by the Statute of Limitations because no action was brought within the period of limitation prescribed by law.

Deponent further deposes and says that upon like inquiry of the agents of the petitioner the fact also appears to be that there were 126 second-class passengers on board the said steamer when she was lost and that out of that number 13 were saved, and that claims in behalf of only 26 of said passengers for loss of life have been filed, and of that number

4071 six have been barred by the Statute of Limitation because no action was brought within the statutory period.

Deponent further deposes and says that upon like inquiry of the agents of the petitioner the fact also appears to be that there were 345 third-class passengers on board the said steamer when she was lost, and that out of that number 50 were saved, and that claims in behalf of only 14 of said passengers for lost of life have been filed, and of that number eight have been barred by the Statute of Limitation because no action was brought within the statutory period.

4072 And deponent further deposes and says that he has also made diligent inquiry of the agents of the said petitioner and finds upon such inquiry that no bill of lading was issued to any of the claimants who have made claims for property alleged to have been lost in the said disaster and set forth in the said claims. This is true with respect to every claim filed.

And deponent further deposes and says that if the said alleged claims for the loss of property are based upon the respective tickets or contracts of passage issued to the parties alleged to have been

thus damaged, the said claims are subject to the following, among other conditions in the tickets or contracts of passage, viz.: 4073

> "The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for specie, securities, jewels and articles of value unless they have been declared and taxed as valuables and deposited with the Purser against a receipt delivered by him."
>
> "In case of damage to or total loss of baggage for which the Company or the Captain may be responsible the liability is not to exceed 100 dollars in 1st class and 60 dollars in 2nd class, regardless of the number of pieces or their contents." 4074
>
> This contract shall be governed by the laws of France and the French Courts alone shall have jurisdiction of any claim which may arise."

And another provision of the said ticket or contract of passage is as follows:

> "The Company will not be liable for loss or damage occasioned by accidents, fire, perils of the sea or unforeseen circumstances, or by barratry, fault or negligence whatsoever of the Captain, Pilot, sailors, members of the crew or passengers;" 4075

which provision is valid under the laws of France, to which law and to whose Courts every holder of such tickets or contracts of passage submitted, as before stated, as part of his or her contract of passage.

And deponent further deposes and says that the respective proctors for the aforesaid two groups

4076 of claimants have taken no testimony whatsoever to establish their said claims, but, as the deponent alleges, for the purpose of annoying and harrassing the petitioner, and causing it expense, they have proceeded to examine a number of the petitioner's Captains of other steamships belonging to the petitioner ostensibly as witnesses *de bene esse,* and have sought the production of the log book and other papers of the said steamers under subpœnas *duces tecum,* and have subjected the said Captains of other steamers of the petitioner to examinations as such witnesses *de bene esse* as to matters not material or pertinent to the establishment of the said
4077 claims, and upon short notice and at inconvenient times, for the avowed purpose of showing that in some way, according to the contention of the said proctors, the petitioner had knowledge of or was privy to the alleged negligence which caused the said disaster; and the deponent alleges that it is the purpose, as declared by said proctors, to continue the said examinations and the call for the said log books and other documents of other Captains and steamers of the petitioner, which, if allowed to proceed, will throw upon the petitioner the expense, annoyance and delay of an extended examination of witnesses in France in order to com-
4078 pletely develop and answer any matters that may be disclosed by the aforesaid witnesses.

And deponent further deposes and says that annexed to the said answers of the two groups of claimants above set forth, are certain interrogatories propounded to the petitioner, some of which have been allowed and others disallowed by the Court, and that those that have been allowed cover all the inquiries that would be permitted to be made of the several Captains of the petitioner's several steamships.

Deponent, therefore, asks for an order of this Court that the said claimants be required to pro-

ceed before the Commissioner and establish by proof 4079
the truth and validity of their several claims, and that pending such proof the said claimants and their proctors may be ordered not to call or examine as witnesses *de bene esse,* or otherwise, the several Captains of the petitioner's steamships, as before stated and as declared to be their purpose, and that the petitioner may have such order or relief in the premises as may be just and proper.

EDWARD K. JONES.

Sworn to before me, this 16th day of November, 1900.

FREDERICK KOPF,

[SEAL.] Notary Public (56), 4080
N. Y. Co.

(Endorsed)—Notice of Motion and Affidavit.—Filed Nov. 23, 1900.

4081

4082 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4083

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 22d day of December, 1900, denying petitioner's motion for an order requiring claimants to prove their respective claims, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from
4084 the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, December 22d, 1900.

Yours, etc.,

EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to Order of December 22d, 1900.—Filed July 29, 1904.

UNITED STATES DISTRICT COURT, 4085

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

4086 Petitioner having moved on the 20th of November, 1900, on an affidavit of Edward K. Jones, Esq., verified November 16, 1900, for an order that certain damage claimants herein prove and establish the validity of their respective claims before the Commissioner heretofore appointed herein, and that said claimants and their proctors be ordered not to call as witnesses or examine by deposition, or otherwise, the captains and other officers of the petitioners's several steamships, nor to call for the production of any book or paper by the petitioner until the said claims are proved and established, or until further order of this Court; and said motion coming on to be heard, Now, after hearing 4087 Edward K. Jones, Esq., in support of said motion, and Robert D. Benedict, Esq., opposed, it is

Ordered, that said motion be, and the same is hereby denied, but without prejudice to a renewal of the motion upon such affidavits and tender and deposit as the petitioner may determine to make.

New York, December 22, 1900.

ADDISON BROWN.

(Endorsed)—Order Denying Motion of November 20th, 1900.—Filed Dec. 22, 1900.

4088 At a Stated Term of the District Court of the United States of American, for the Southern District of New York, held at the Court Room in the United States Post Office and Court House Building, in the City of New York, on the 24th day of December, 1900.

Present—The Honorable ADDISON BROWN,
Judge.

IN THE MATTER

4089 OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

The motion of La Compagnie Transatlantique, petitioner herein, that the claimants W. C. Perry, administrator of the estate of K. M. Perry, deceased; the estate of Sadie Perry, deceased; the estate of Florence Perry, deceased; and John Perry,
4090 father and next of kin of the infants Katherine Perry and Albert Perry, deceased, and Pauline Henuy, administratrix of the estate of Juliette Cicot, deceased, be compelled to prove their claims herein, and for an injunction restraining the said claimants from proceeding herein, until said claims be proved, coming on to be heard on the 23d day of November, 1900;

Now, after hearing Edward K. Jones, Esq., in support of said motion, and Robert D. Benedict,

Esq., and A. Gordon Murray, Esq., in opposition 4091
thereto, and on motion of A. Gordon Murray, proctor and counsel for the above-named claimants, it is

Ordered, that the said motion be and the same hereby is in all respects denied, except that the said petitioner may within a reasonable time renew said motion upon making a proper tender or deposit in Court of such amounts as it deems itself to be liable for, to each of the aforesaid claimants.

ADLISON BROWN.

(Endorsed)—Order—Filed Dec. 28, 1900.

4092

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

4093

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 28th day of December, 1900, denying petitioner's

4094 motion for order requiring claimants Perry *et al.*, to prove their respective claims, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from the final decree in this cause, as provided by the 52d rule of admirality prescribed by the Supreme Court.

Dated New York, December 28th, 1900.

4095 Yours, etc.,

EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

4096

UNITED STATES DISTRICT COURT, 4097

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 4098

Petitioner's exceptions to the claim of George Deslions.

FIRST.—The petitioner excepts to the alleged first cause of action of the above-named George Deslions on the ground that the facts therein stated do not constitute a cause of action against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

SECOND.—The petitioner excepts to the alleged second cause of action of the said claimant on the 4099 ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner.

JONES & GOVIN,
Proctors for Petitioner.

(Endorsed)—Exceptions to Claim of George Deslions.—Filed October 16th, 1900.

4100 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4101

Petitioner's exceptions to the claim of Antonio Molinari.

FIRST.—The petitioner excepts to the alleged first cause of action of the above-named Antonio Molinari on the ground that the facts therein stated do not constitute a cause of action against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

SECOND.—The petitioner excepts to the alleged
4102 second cause of action of the said claimant on the ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner.

JONES & GOVIN,
Proctors for Petitioner.

(Endorsed)—Exceptions to Claim of Antonio Molinari.—Filed Oct. 16, 1900.

UNITED STATES DISTRICT COURT, 4103

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 4104

Petitioner's exceptions to the claim of Charles Rabelli.

FIRST.—The petitioner excepts to the alleged first cause of action of the above-named Charles Rabelli on the ground that the facts therein stated do not constitute a cause of action against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

SECOND.—The petitioner excepts to the alleged second cause of action of the said claimant on the 4105 ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner.

JONES & GOVIN,
Proctors for Petitioner.

(Endorsed)—Exceptions to Claim of Charles Rabolli.—Filed Oct. 16, 1900.

4106 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
4107 of liability and other relief.

Petitioner's exception to the claim of Adrien Hummel.

The petitioner excepts to the claim of the above-named Adrien Hummel on the ground that the facts therein stated do not constitute a cause of action against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

JONES & GOVIN,
Proctors for Petitioner.

4108 (Endorsed)—Exception to Claim of Adrien Hummel.—Filed Oct. 16, 1900.

UNITED STATES DISTRICT COURT, 4109

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 4110

Petitioner's exception to the claim of Irene Cesere, as administratrix of the estate of Guiseppe Cesere, deceased.

The petitioner excepts to the claim of the above-named Irene Cesere on the ground that the facts therein stated do not constitute a cause of action against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

JONES & GOVIN,
Proctors for Petitioner.

(Endorsed)—Exceptions to Claim of Irene Cesere, Admx. of Guiseppe Cesere.—Filed Oct. 16, 1900. 4111

4112 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4113

Petitioner's exceptions to the claim of Pauline Henuy, as administratrix of the estate of Juliette Cicot, deceased.

FIRST.—The petitioner excepts to the alleged first cause of action of the above-named Pauline Henuy on the ground that the facts therein stated do not constitute a cause of action against the petitioner.

SECOND.—The petitioner excepts to the alleged second cause of action of the said claimant on the ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner.

4114

JONES & GOVIN,
Proctors for Petitioner.

(Endorsed)—Exceptions to Claim of Pauline Henuy, as Admx., etc.—Filed October 16th, 1900.

UNITED STATES DISTRICT COURT, 4115

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4116

Petitioner's exception to the claim of W. C. Perry, as administrator of the estate of Kate M. Perry, deceased.

The petitioner excepts to the claim of the above-named claimant on the ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

JONES & GOVIN,
Proctors for Petitioner.

4117

(Endorsed)—Exception to Claim of W. C. Perry, Admr. of Estate of Kate M. Perry, dec'd.—Filed October 16, 1900.

4118 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4119

Petitioner's exception to the claim of W. C. Perry, as administrator of the estate of Sadie Perry, deceased.

The petitioner excepts to the claim of the above-named claimant on the ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

JONES & GOVIN,
Proctors for Petitioner.

4120

(Endorsed)—Exception to Claim of W. C. Perry, as Admr. of Sadie Perry, dec'd.—Filed Oct. 16, 1900.

UNITED STATES DISTRICT COURT, 4121

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

4122

Petitioner's exception to the claim of W. C. Perry, as administrator of the estate of Florence Perry, deceased.

The petitioner excepts to the claim of the above-named claimant on the ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

JONES & GOVIN,
Proctors for Petitioner.

4123

(Endorsed)—Exceptions to Claim of W. C. Perry, Admr. of Estate of Florence Perry, dec'd.—Filed Oct 16, 1900.

4124 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
4125 of liability and other relief.

Petitioner's exception to the claim of John Perry, as next of kin of Katherine and Albert Perry, deceased.

The petitioner excepts to the claim of the above-named claimant on the ground that the same is insufficiently set forth and does not show or exhibit any valid claim against the petitioner, and, furthermore, no capacity or right to sue or file a claim is exhibited.

JONES & GOVIN,
Proctors for Petitioner.

4126

(Endorsed)—Exception to Claim of John Perry.—Filed Oct. 16, 1900.

UNITED STATES DISTRICT COURT, 4127

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability. 4128

Please take notice, that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by George Deslions, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated New York, April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq., Commissioner, and 4129
MESSRS. BENEDICT & BENEDICT,
Proctors for Claimant,
68 Wall Street,
New York City.

(Endorsed)—Notice of Objection to Claim of George Deslions.—Filed Apr. 21, 1902.

4130 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability, etc., *in re* Proof Claim of George Deslions.

4131

NEW YORK POST OFFICE,
September 25, 1902.

Reference to Ascertain Damages.

Before THOMAS B. ALEXANDER, United States Commissioner.

Present—Messrs. BENEDICT & BENEDICT (Mr. R. D. Benedict) for the Petitioners;
Mr. EDWARD K. JONES (Mr. Haldane and Mr. Kopf) for the Company.

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Mr. Benedict produces notice of reference, with admission of service, and adjournment until to-day.

GEORGE DESLIONS, being duly sworn and examined as a witness on his own behalf, testifies.

By Mr. Benedict:

Q. You are making a claim against the petitioner, the Compagnie Generale Transatlantique? A. Yes, sir.

Q. Do you remember the sailing of the *Bour-* 4133
gogne in 1898? A. Yes, sir.

Q. What had been your business before that? A. I was a dealer in curios and antiques; a collector for museums and a private collector.

Q. Had you a collection of curios and various other articles yourself? A. Yes, sir, I was a collector myself.

Q. Did that collection of yours go on board the *Bourgogne?* A. Yes.

Q. When she sailed on the 4th of July, 1898? A. Yes, sir.

Q. Did you pack the collection yourself? A. I did. 4134

Q. In how many cases was it packed? A. To the best of my recollection eight or nine large cases.

Q. When did you go to the dock where the steamer was lying? A. The morning the boat should sail.

Q. About what time were you there? A. About something like nine o'clock in the morning; about nine o'clock.

Q. Did you find your cases on the dock? A. I did, yes, sir.

Q. What was done with those cases? A. I had the cases shipped to France, to Havre.

Q. Were they weighed? A. They were. 4135

Q. Were you told what would be the amount you would have to pay? A. There was a mistake; the trunks first were to be sent to Paris, as freight, and I asked the object of it, saying I would exhibit this collection in Havre, and the man who weighed the trunks said that they could do nothing, it was too late; they had to go to Paris. I remonstrated with this man, saying that as I was the owner of those trunks that I would ship them wherever I pleased; not for him to say to me what I should do. So he said I would have to apply to Mr. Faguet, the

4136 agent, or the man who acted as agent of the Company.

Q. Did you apply to Mr. Faguet? A. I applied to Mr. Faguet.

Q. Where was he? A. He was there on the pier; on the dock; I said to Mr. Faguet, "I think this is an outrage, that I should be compelled to pay freight from here to Paris as long as I want those trunks in Havre, and then I will have to pay again from Paris to Havre, and I don't think it is right. I think I should have the right and privilege to direct my trunks wherever I want to." "Well," he said, "I presume there is some mistake of the man
4137 who weighed the trunks." He went to him and had a talk about it, and finally Mr. Faguet gave me the right about it; he said I was right about it, saying I should only pay up to Havre; he said, "This man has got a perfect right to send his trunks wherever he wants," and he said, "We will have to make a deduction for the freight up to Havre, from Paris to Havre," and he figured out, I forget what amount, some $39 or $40, I forget exactly; it was $39 or a fraction over; which I paid.

Q. Did you have any conversation with Mr. Faguet as to what the contents of the cases were? A. Yes, sir; Mr. Faguet asked me what——

4138 Mr. Kopf objects on the ground that it is not shown that Mr. Faguet had any connection with this Company. Objection overruled.

(A. continued). Mr. Faguet asked me what was the contents of those big trunks, and I said it was a very valuable collection——

Mr. Kopf objects to putting in here as primary evidence what this witness told Mr. Faguet was in the trunks. Objection overruled.

(A. continued). That had to go absolutely with 4139
that boat, as I intended to exhibit that collection in France; it was an Indian collection, Alaskan, and different collections besides. He called attention to the fact that the trunks were very big trunks, and also the fellow who weighed them.

Q. Was anything said as to the value of the collection?

Objected to as leading. Objection overruled.

A. He asked me, "Is that so, a collection, is it important that it should go," and I said, "Yes, it is to go absolutely." He said, "What is that worth?" and I said, "It is worth a hundred thousand dol- 4140
lars, and more than that." I said, "That collection can't be bought for any money now." I told them to be careful that I wanted the trunks not to be lost, and he said it was my right, and he would notify the captain himself, to that effect, Captain Deloncle. That was just a few minutes before the boat was to leave. He says to the man, "Hurry up; those trunks have got to go on board the ship; be careful, those are valuable trunks; don't mix them up." And they were the very last trunks put on board the boat.

Q. Did you see them go on board? A. I saw them go on board, yes, sir, I am positive; I watched 4141
them. I saw myself that the trunks were put on board. And I said to Mr. Faguet, "Now I want a paper; where is my receipt," and Mr. Faguet said to me that was all right. He handed to me what is called in French a countermark with a number on it, the same was pasted on every one of those trunks, and he said, "That is all right, you needn't worry about it; when you come to Havre present this countermark." I believe it was a yellow paper with a number on it; what number I don't recollect exactly; my recollection is that it was a yellow

4142 paper. And he said, "When you present these in Havre it will clear all right," and I thanked Mr. Faguet for his kindness.

Q. Had you ever seen Mr. Faguet before that day? A. Yes, sir, I know Mr. Faguet. It was Mr. Faguet.

Q. Did you see him after the word came of the loss of the *Bourgogne?* A. Yes, sir.

Q. Where did you see him?

Mr. Kopf objects to any occurrences after the loss of these goods, as not material. Objection overruled.

4143 A. I saw him in his office, in the office of the French Company. I went there and asked about the agent, the general manager here in New York, in Bowling Green; a gentleman introduced me to Mr. Faguet in his private office. Mr. Faguet recognized me at once, and came towards me with both hands outstretched this way (indicating), saying, "Mr. Deslions, I sympathize very much with you," and his voice was tearful, and he had in his voice a tremble when he spoke, and said, "I sympathize very much with you."

Mr. Kopf objects and moves to strike out the testimony as to what conversation was had in
4144 Mr. Faguet's office, as wholly immaterial. Objection overruled.

(A. continued). He said, "I am very sorry for what happened, that you have lost everything you had at once, your valuable collection and wife and child; you are certainly the man who has sustained the greatest loss on this catastrophe. I sincerely sympathize with you." He says, "I think the Company will take care of you by giving you a good position; be a little patient. I will see to that myself."

Mr. Kopf moves to strike out the testimony as to the position. Stricken out. 4145

Mr. Haldane objects further on the ground that any statement made by the agent of the Company at that distance of time after the occurrence is incompetent, and states that it would not be binding on the Company for any purpose whatever. Objection overruled.

Q. How long after the loss of the *Bourgogne* was this last conversation that you had with Mr. Faguet? A. As soon as I heard some news by paper; the extra "The *Bourgogne* Lost." I went right to Mr. Faguet. I was about to sail myself to Europe and I went right to Mr. Faguet to know what he knew about it. He said, "Unfortunately, I have myself to confirm the news. I am sorry, very sorry." 4146

Q. How long had you been in the business of collecting curios of this kind? A. Over twelve years; more than that; thirteen years.

Q. Where had you gathered together this collection; from what places had you got this collection? A. It was in correspondence with dealers from all over the United States, Alaska, in South Sea Islands, New Guinea, and I was in correspondence with dealers in all parts of the world.

Q. Where had you been yourself, aside from the correspondence, to get these curios? A. I had been myself West to get these curios; I was in New Mexico to buy some curios from the Indians; I got some from the Sioux Indians, and I was corresponding with many of them. 4147

Q. Have you made up a list of the articles that were contained in those cases that you speak of? A. Yes, sir.

Q. (Handing witness paper.) Is that the list? A. That is the list.

Mr. Kopf objects to any reference to a list. Objection overruled.

4148 Q. How did you make up this list? A. From memory, thinking what I had in my collection; remembering what I had in my collection.

Q. What do you say as to the correctness of the statements in that paper as to the articles that were here?

Mr. Kopf objects, and states we are entitled to his testimony from his mind; he says he has made up this list from memory. We are entitled to his testimony that way. Objection overruled.

A. I made this list remembering what I had in
4149 my collection. I was very familiar with what I had in my collection; I have seen it a number of years every day, before my eyes. I certainly would remember; I would remember it a hundred years from to-day.

Mr. Haldane: We want every item proved by the best evidence.

Q. Then will you please give us from your memory the various items which were contained in that collection; one after another? A. There was a collection of North American Indians' curios; there was another collection of pipes from every part of
4150 the world, all different; American pipes, French pipes, German, Australian, Japanese, Chinese, and so on; from every part of the world. I had a collection of Alaskan curios from Alaska; and I had some New Zealand, New Guinea, African, etc., I had many Roman and Greek coins, medals; French medals, Italian medals, and some Austrians——

Q. I want you to mention each article just as it is in that list, if you can do it.

Mr. Kopf objects to the list being exposed to the witness.

The Commissioner: If he can testify from mem- 4151
ory he must not look at the list.

Q. Can you make a statement of every article that was there, without looking at this paper? A. No; it has to go in many details; I don't know whether those gentlemen understand the meaning of those articles or not.

Q. I am examining you now. The question is whether you can begin at the beginning and give us a list of every article. A. I can tell what is in that list; that collection of North American Indians was—I remember what is in my collection.

Q. Wait a moment; my question is whether you can, without looking at the paper at all, tell us 4152
every article that was in that collection of yours, beginning with the first one and going right through to the end, from your memory. A. Very near.

Q. Then you will have to begin with the first one; whatever it was, and go through with them, if you can. A. My collection is very fresh in my memory.

Q. What is the first one? A. I can't say that way. I can say my collection perfectly well, what was in my collection. My collection was composed of some shields, war bonnets, war clubs, lances, tomahawks of stone and steel, pipes, tobacco 4153
pouches, quivers, bows, arrows, war masks, leggings, war shirts, baskets, necklaces.

Q. You don't tell how many of this thing or how many of that there were, and whether you had one or two or a dozen of each one. Can you tell that, without looking at this paper? You must do it. If you can't you are entitled to look at the paper. A. Some I may be and some I may be not; I want to see that list.

Q. In that did you have any Indian photos?

Objected to as leading.

4154 The Commissioner: If he can testify from memory he is an extraordinary man.

Mr. Benedict: That is what I think.

Q. My question is again, can you from memory tell us individually every article there was in that collection of yours? A. Some I can, yes.

Q. Can you tell every one? A. I don't think I can state every one.

Q. Can you tell every one by looking at that list?

Objected to as incompetent. Objection overruled.

A. Yes, certainly.

4155 Q. Looking at that list, please tell me what the articles were that you had in that collection.

Objected to as incompetent. Objection sustained.

Q. Looking at that list, can you tell me whether you had any Indian photos?

Objected to as leading, this being the very matter as to which the witness has relied upon his memory up to this moment.

Q. I ask you again, were there in your collection any Indian photos?

4156 Objected to as leading and suggestive. Objection sustained for the present.

Q. Had you ever obtained for your collection any Indian photos? A. Yes, sir.

Q. How many of those Indian photos had you obtained? A. I remember well there were 500 photos in my collection.

Q. What were they photos of? A. Of Indians; old Indian portraits.

Q. Could those photos have been duplicated? A. No, sir, because most of them, if not all of the plates

destroyed at the time. They were a great many 4157
years ago.

Q. Where had you obtained those photos? A. I bought some in Chicago, and I bought some—the latest I bought in Doris Museum when it was sold out.

Q. Do you know the value of such photos at that time?

Objected to as immaterial, it not being shown that any of them were in any of these packages.

The testimony is allowed, provided Mr. Benedict connects them to this lot in question.

4158

Q. Did those photographs form part of the collection that you shipped? A. Yes, sir, certainly they did.

Q. What was the fair value of that collection of Indian photos?

Objected to that the witness hasn't shown himself competent to show that. The market value is the question. Objection overruled.

Mr. Kopf: I further object on the ground that the true value is the price that the witness paid for them. Objection overruled.

A. They average—we would say that they were 4159
worth half a dollar apiece, and no less. Some of those photos were worth five or ten dollars apiece.

Objected to as not responsive. Objection overruled.

Q. Had you bought for your collection at any time, or obtained any Indian medals? A. Yes, sir.

Q. About how many? A. I think I had ten medals in my collection, ten or twelve.

Q. What kind of medals were they? A. There were medals given to the Indians by some Presi-

4160 dent of the United States and some were given by George the Second of England, which are most scarce, of course.

Q. Were those medals in these boxes of yours? A. Yes, sir, they were.

Q. What was the whole collection worth?

Mr. Haldane: I object as incompetent; no foundation being laid.

Objection overruled.

A. They were worth $25 apiece and more; there was none less than twenty-five, and they were worth more than that too; there were some worth $30 or
4161 $35 and $50 apiece.

Q. In making your collection had you made a collection of Indian pipes? A. Yes, sir.

Q. About how many Indian pipes were there in that collection? A. I had in my collection about 300 pipes.

Q. Were those in these cases that were shipped? A. Yes.

Q. Have you bought Indian pipes? A. Yes, sir.

Q. And sold Indian pipes? A. Yes, sir, I have been collecting pipes for over ten years.

Q. What was the value of that collection of Indian pipes? A. Some were very valuable; in fact,
4162 some I refused to sell at any price. They were worth several thousand dollars; I had over $3,000 worth of pipes.

Q. Of the Indian pipes? A. Yes, sir.

Q. Had you any other collections of other pipes besides Indian pipes? A. Yes, sir.

Q. From what parts of the world had those pipes been collected? A. China, Japan, Corea, India, Turkey, Greece, Africa, France, Germany, Austria, England; every part of the world; every country in the world.

Q. About how many pipes were there in that col- 4163
lection? A. Several hundred.

Q. And were they also in these cases that were shipped? A. They were also in these cases that were shipped.

Q. What was the value of that collection of pipes? A. Three or four or five thousand dollars, and possibly more yet; some couldn't be duplicated at any price; I had an Ashantee pipe which couldn't be duplicated; it was bought by a missionary and it couldn't be duplicated. It may have been worth to a man a thousand dollars, or it may be worth $5,000, if he didn't have that pipe. That is the way it goes with a collector. It was unique; I didn't 4164
want to sell it under any consideration. I was offered time and again by wealthy people of the city.

Q. How much had you ever been offered? A. $500 was offered one time for that pipe.

Q. Had you made a collection of arrow heads? A. Yes, sir.

Q. Where had those arrow heads come from? A. From Oregon, and very small points made of obsidian and different other stones.

Q. How many were in the collection? A. I had five or six hundred in the collection.

Q. Were they in these cases? A. They were in it, yes, sir.

Q. What was the collection of arrow heads 4165
worth? A. Some of those were worth——

Q. Give us what you can say the whole of them were worth? A. Five or six hundred dollars.

Q. Had you made a collection of Indian dolls? A. Yes, sir.

Q. How many of those had you? A. I think I had ten.

Q. Were they in these cases, too? A. They were in those cases, yes, sir.

Q. Was that a collection of common, or of rare

4166 things? A. It was rare, because some had been made by Sitting Bull and his wife, and some represented Sitting Bull and his wife.

Q. What was the value of those ten Indian dolls? A. $15 or $20 apiece or more.

Q. Had you made a collection of Aztec masks? A. Yes, sir.

Q. How many of those had you collected?

Mr. Haldane asks that the witness should not sit so that he can look at the list and answer these questions.

The witness: I don't look at the list, and I can't see any way.

4167

A. I believe I had about ten masks.

Q. Were they in these trunks? A. Yes, sir.

Q. What were they worth? A. $100 apiece.

Q. Had you any Indian books that were in this collection? A. Yes, sir.

Q. What kind of books were they? A. I had Schoolcraft, McKim Hall illustrated; I had a portfolio of George Catlin, which was published in London, in something like the beginning of this century, 1811 or 1814, or something like that; his books are very scarce; I had a book published by a missionary, of which there are very few examples, worth $150; I forget the name of the author; it is

4168 very scarce and rare, and very valuable.

Q. These books were in these trunks? A. Yes, sir.

Q. What value do you say they were fairly worth? A. $500, or they were worth more than that.

Q. Had you collected any buckskin Mexican suits? A. Yes.

Q. How many? A. I don't understand exactly what you mean by this.

Q. I give it to you just as it is. A. What do you mean?

Q. Made of buckskin. A. I had my own shirts made of buckskin; I had two Mexican suits. 4169

Q. Where did you get those? A. In Mexico.

Q. Were they in these trunks? A. Yes, sir, they were in these trunks.

Q. What was their value? A. I think they were something like $100 American money, apiece.

Q. Were they worth that at this time? A. They are worth more than that now.

Q. Had you got a collection of Mexican sombreros? A. There were also several to go with the suits.

Q. Were they part of the suits, or separate? A. Separate. 4170

Q. How many of those, do you think? A. I think I had two also.

Q. What were they worth? A. I paid $50 for one.

Q. What value will you put on the two? Fair value. A. I don't recollect exactly what I paid for the other; $25 or $30, or may be more.

Q. Were those in these cases? A. Yes, sir, they were in those cases.

Q. Had you collected any Mexican spurs? A. I did, yes.

Q. How many had you of those? A. Well, there was one pair of solid silver, it weighs about a pound, or something like that; I paid $250 or something like that. 4171

Q. How many pairs did you have of the silver? A. I remember only one pair there I think; no, I had another pair of silver; I had two pairs of silver.

Q. What were they worth? A. They would be worth $500 for the two pairs.

Q. Did you have any of iron? A. I had some of iron, yes, sir; several pairs of iron; I believe two pairs of iron.

4172 Q. What were they worth? A. $50 or $75 a pair; they were large ones, elaborately carved.

Q. Did you have any Mexican bridles? A. Yes, sir, I had one bridle with silver ornaments, very elaborately finished.

Q. Was there only one, or were there others? A. No, sir, I had some others.

Q. What were the Mexican bridles worth? A. There was one bridle there worth $250; and another was worth I believe about $100.

Q. Did you have any Mexican saddles? A. Yes, sir.

Q. How many? A. I had one; I had other sad-
4173 dles which were Indian saddles.

Q. I am speaking of Mexican saddles? A. I remember one saddle.

Q. What was that worth? A. $500 or $600; I can't say exactly; possibly more; I think it was more even than that; it was inlaid with silver.

Q. Did you have any Mexican leather trunks? A. Yes, sir.

Q. How many of those? A. I think there was two; I had two; but one was very handsomely worked.

Q. What were they worth? A. $150 to $200.

Q. These spurs and saddles and bridles and
4174 trunks were they in the trunks that were in the ship? A. Yes, sir, they were.

Q. Had you any collection of Peruvian mummies? A. Yes, sir.

Q. Do you remember how many you had? A. Yes, sir, one woman and one man—supposed to be the father and mother and child.

Q. Had you ever bought and sold Peruvian mummies? A. I did.

Q. What were these three fairly worth? A. I believe I paid $900 or $1,000 for them, and they are probably worth $1,500 or $1,600.

Q. Were they in these trunks? A. Yes, sir, they 4175
were; yes.

Q. Had you made any collection of Peruvian heads that were different from the mummies? A. Yes, sir.

Q. How many of the heads had you? A. There were three or five in my trunks; five I believe in my trunks.

Q. What were they worth? A. $125 or $150 apiece.

Q. Were they also in the trunks that were shipped? A. Yes.

Q. Had you made a collection of Indian masks of wood? A. Yes, sir. 4176

Q. How many had you of those? A. About ten or twelve; I think it was ten; I want more time than this; I want to think of this; I have to remember where they were disposed in my room.

Q. Take your time and think of it? A. Ten.

Q. What were they worth? A. Some were worth $25 apiece and more; I have sold some for $50 apiece.

Q. Did you have any Alaskan masks? A. Yes, sir.

Q. What were they made of? A. They were made of wood.

Q. How many of those? A. There was a series of 4177
masks representing every sickness; for the medicine man to represent every sickness; there were a dozen.

Q. What were they worth? A. $25 or more apiece.

Q. Were those masks, both the Indian and the Alaskan, in the trunks? A. Yes, sir.

Q. Have you made a collection of Indian rattles? A. Yes.

Q. How many of those? A. Six I believe.

Q. What were they worth? A. $15 to $25 apiece.

4178 Q. Had you any Alaska rattles, aside from the Indian rattles? A. Yes, sir, medicine man's rattles.

Q. How many of those? A. There were two.

Q. What were they worth? A. $50 apiece or more.

Q. Did you have any Indian drums? A. Yes, sir.

Q. How many? A. What kind of drums do you mean?

Q. Ceremonial drums? A. Two.

Q. What were they worth? A. $200.

Q. Did you have any Indian war clubs of stone? A. Yes, sir, I had many.

4179 Q. How many of those? A. Ten or twenty.

Q. What were they worth? A. $15 apiece, or $20 apiece.

Q. Did you have any tomahawks? A. Yes, sir, I had some tomahawks; stone tomahawks or steel tomahawks?

Q. Either or both. A. Well, a dozen steel tomahawks and two stone tomahawks.

Q. What were they worth? A. Some of those tomahawks are worth $100 apiece and some $150 apiece, and some others were worth $35 or $30 or $50. I can't tell exactly.

Q. You must give it as near as you can. A. I
4180 can tell you what I had in the collection I have told you that before. I haven't got the time to think about it.

Q. Take all the time you need. A. There are also some descriptions which I know the meaning of, and no other man knows the meaning, except a man who is a collector; there are technical names.

Q. How much were all of them worth, at least? A. $500.

Q. Did you have any Indian shields? A. I had, yes.

Q. Made of what? A. They are made of Buffalo 4181
hides; very scarce.

Q. How many of them did you have? A. I have to think where they were placed in my room.

Q. Take all the time you want. A. Forty.

Q. What were they worth. A. $100 to $150 apiece.

Q. Were they in these trunks? A. Yes, sir, very, very rare; very scarce; they were in these trunks.

Q. Did you have any collection of war bonnets with eagle feathers? A. Yes, sir.

Q. How many of those? T. About the same quantity as the shields; about 40.

Q. What were they worth? A. Altogether? 4182

Q. Yes, altogether. A. There was a war bonnet in my collection which was worth alone $300.

Q. What should you say the whole of them were worth? A. Some were worth $100; some $50.

Q. What was the whole forty worth? A. $2,500 or $3,000.

Q. Were they in these trunks? A. They were in the trunks.

Q. Did you have any war shirts of buckskin? A. Yes, sir.

Q. How were they embroidered and trimmed? A. They were embroidered with porcupine and most of them with beads; most of them embroidered 4183
with porcupine quills and some with beads and trimmed with scalp locks. Some were embroidered with scalp locks; there were forty.

Q. What were they worth? A. $100 and more apiece.

Q. What are ghost shirts? A. A ghost shirt is a shirt which was introduced by Sitting Bull at the time of a rebellion against the United States. A ghost shirt was made of muslin and the men who had those ghost shirts were supposed to go through

4184 some ceremony, and Sitting Bull was at the head of the ceremony; he was the head medicine man.

Q. Did you have any of those? A. Twenty.

Q. What were they worth? A. They were supposed to be bullet-proof and worth $20 or $25 apiece.

Q. Had you made any collection of scalps? A. Yes, sir.

Q. How many scalps? A. Quite a number of scalps; I should say fifteen, about.

Q. How much were they worth? A. A scalp is worth on an average of $100 apiece; some are worth more and some were worth not quite as much;

4185 human scalps.

Q. Had you any pairs of leggings? A. Yes, sir, about forty.

Q. Worth how much?

Mr. Kopf: I regret that I have to speak about this, but the proximity of this witness to that list is altogether too close.

Mr. Benedict: I don't mean that he shall see. The witness said that he couldn't see, and I took it for granted that he could not.

List is removed further from witness.

A. I say about forty, because they were a part of

4186 a suit.

Q. About how much were they worth? A. Oh, about $25 a pair, or $30 a pair; some would be more.

Q. Did you have any moccasins? A. Yes, sir.

Q. How many of those? A. 250 or 300 pairs, about.

Q. Worth how much? A. Five or six dollars a pair, on the average.

Q. And all those articles that I have asked you about were in these trunks? A. In these trunks, yes, sir.

Q. Did you have any lances? A. Yes, sir. 4187

Q. How many? A. Lances with feathers and scalps attached to them?

Q. Yes? A. Two lances; I say they were worth about $500 with scalp and eagle feathers on them.

Q. Did you have any dancing sticks? A. Yes, sir, I had.

Q. Did they have any feathers on? A. Yes, sir, they had eagle feathers on; medicine and eagle feathers on.

Q. How many of those? A. Two.

Q. Worth how much? A. On an average $150 to $100 for the two.

Q. Did you have any dancing belts? A. Yes, sir. 4188

Q. Hom many of those? A. I guess I had at least twenty.

Q. Were they trimmed? A. They were, with eagle feathers and some porcupine embroidery and some feathers embroidered with porcupine; about $20 or $25 apiece, and more, too.

Q. Did you have any tobacco pouches? A. Yes, sir.

Q. How many? A. About eighty.

Q. What were they made of? A. Embroidered with porcupine quills and some embroidered with beads; made of buckskin.

Q. And worth how much? A. Some as high as 4189 $50 apiece.

Q. The whole eighty? A. They were all selected articles in that collection; $25 some of them.

Q. What was the value of the whole eighty? A. About $20 or $25 apiece.

Q. Did you have any game bags? A. Yes, sir.

Q. How many of those? A. About twenty.

Q. They were worth how much? A. Something like $25 apiece.

Q. Did you have any saddle bags? A. Yes, sir.

Q. How many? A. About ten or twelve.

4190 Q. Worth how much, all of them? A. $600 or something like that.

Q. Did you have any tents? A. Yes, sir; two tents.

Q. Indian tents? A. Yes, sir.

Q. What is the name of those in Indian? A. They call them teppees.

Q. How much were they worth? A. $175; two, I guess.

Q. Is that your best judgment of it; give us your best judgment? A. I refused $125 for one alone; I didn't want to sell it.

Q. Did you have any Indian women's suits? A.
4191 Do you mean squaw dresses?

Q. Yes? A. I had squaw dresses, yes, sir.

Q. How many of those? A. I remember two distinctly, but I think I had more than that.

Q. Well, take your time? A. I think I had four.

Q. What were they worth? A. $150 apiece or more; there was one there among the collection that I refused to sell; I didn't want to sell it at any price.

Q. Had you been offered anything for it? A. Yes, sir, I was offered $500 for it; I don't know whether that one is referred to or not; but there was one that I refused $500 for.

4192 Q. Did you have any Indian boys' dresses? A. I had a couple of boys' dresses, and also a couple of little girls' dresses.

Q. How much would they be worth? A. $50 apiece.

Q. Did you have any suits of Indian chiefs? A. Yes, sir.

Q. How many of those? A. I had one that was very valuable.

Q. What made it valuable? A. Because the war shirt was very elaborately trimmed with porcupine and ornamented with scalp locks, and leggings also

to match, and the moccasins also, and there was a 4193
big war bonnet and the feathers were all embroidered with porcupine and trimmed with ermine and some silver ornaments, and that suit was worth several thousand dollars.

Q. How much, at least? A. At least $3,000.

Q. Did you have any other suits of chiefs besides that one, complete suits of Indian chiefs? A. There was many others there; what do you mean? War shirts?

Q. I mean complete suits of Indian chiefs, besides that one that you spoke of? A. There was another one fixed up on the wall with leggings, etc., but I don't remember whether that was put as a 4194
chief's dress. Is this one put separately?

Q. No, the other one that you spoke of was put separately. Now I am asking you about all the others? A. I had besides that about forty different complete suits of which I spoke before.

Q. Oh, well, I don't speak of those. Didn't you have some complete suits of Indian chiefs? A. Besides the one I have mentioned.

Q. Yes, besides what you have testified to before A. There was two suits; there was another one.

Q. What were they worth? A. This other one I presume was worth about $1,500 or something like that.

4195

Q. Do you remember any other than that one; that makes two special complete suits; do you remember any other? A. No, I don't remember any other.

Q. Do you remember whether you had any cow boy suits? A. Yes.

Q. How many of those? A. I had my own costume in the first place.

Q. Any other? A. Man's?

Q. Yes; cow boy suits? A. I had another pair, there was two.

4196 Q. What were they worth? A. Not worth very much; one was worth about $25, and I presume my own was worth about $50; they had silver trimming.

Q. How many girl cow boy suits? A. One for my wife.

Q. How much was that worth? A. About $50; there was some silver on it.

Q. Did you have any Indian saddles? A. Yes.

Q. How many? A. There is a squaw saddle, and also a man's saddle, which are both Indian.

Q. Then how many of both; I asked for Indian saddles? A. I think about two; I don't remember
4197 any other.

Q. What were they worth, those two? A. Well, may be $50 for the two; one was very elaborate.

Q. Did you have any scalping knives? A. Yes, sir, I did.

Q. How many of those? A. Scalping knives and scabbards?

Q. Both? A. Two scalping knives.

Q. Two with scabbards? A. Two had scabbards, and I had others.

Q. How many others that didn't have scabbards? A. Some scabbards that didn't have the knives in.

Q. How many of those? A. Ten other scabbards
4198 $10 apiece.

Q. How much were they worth, knives and scabbards? A. $25 apiece.

Q. Did you have any bows and quivers and arrows? A. Yes.

Q. How many of those? A. I guess about ten.

Q. Give us your best memory? A. There used to be one to every shield; the shield comes here and the quiver and bow and arrow comes under (indicating). That way there would be about forty.

Q. How much would they be worth, all of them? A. Some worth $15 and $25 apiece; some $15 and $25.

Q. On the average what were they worth? A. 4199
$20 or $25 apiece.

Q. Did you have any Indian blankets? A. Yes.

Q. How many? A. About fifteen.

Q. How much were they worth? A. There was one worth $250; there were several others worth $100 and some were worth $50.

Q. Was there any that was worth less than $50? A. No, I don't think there was any there, no, sir.

Q. Did you have any Buffalo robes? A. Yes, I had two.

Q. How much were they worth? A. $75 apiece or more.

Q. Did you have any Buffalo skins that were 4200
painted? A. Yes, I had.

Q. How many of those? A. Five, I believe.

Q. How much were they worth? A. $2,500 to $3,000.

Q. What was that painting? A. Pictography.

Q. Painted by whom? A. One was by Yellow-hand—that skin was captured by Col. Cody, Buffalo Bill; he was invited to come and see my collection——

Q. Never mind that. Did you have any gun cases? A. Yes.

Q. How many? A. Well, about ten or twelve.

Q. Worth how much? A. $20 or $30 apiece.

Q. Did you have any wampum belts? A. Yes, sir. 4201

Q. How many? A. I had two.

Q. Worth how much? A. Worth $100 apiece.

Q. Did you have any Iroquois shells and necklaces? A. Earrings and necklaces?

Q. Yes; do you remember how many? A. I am trying to think of them.

Q. Take your time. A. I think five or six.

Q. What were they worth? A. There was one there that was worth about $50 apiece; the shells were extraordinarily long; the price, I think, is according to the length of the shell.

4202 Q. What kind of shell is it? A. It is a species of cornea and some are worth fifty cents apiece, and some are worth $5 apiece.

Q. How much would all of them be worth? A. In a necklace like that I have seen them worth $100, or $150, or $50.

Q. How much would these be worth, on the average? A. Necklaces and earrings of large Iroquois shell, an average of $200 or $250 for the whole of them.

Q. Did you have any elk teeth necklaces? A. Yes.

Q. How many? A. I think also about the same
4203 number.

Q. What were they worth? A. Elk teeth are worth 75 cents apiece, or a dollar.

Q. But the whole necklace? A. About $500 for the whole of them.

Q. About how many teeth to the necklace? A. Some necklaces have about fifty teeth, or seventy-five.

Q. Did you have any wampum necklaces? A. Yes.

Q. How many of those? A. I remember two very fine ones.

Q. Do you remember any others? A. About the others; I think there was a couple of others; two
4204 especially.

Q. What were the two worth? A. $150.

Q. And the other two that you speak of? A. They would be $25 or $30 apiece.

Q. Did you have any deer hoof necklaces? A. Yes.

Q. How many of those? A. I think there was about the same of those.

Q. What were they worth? A. Some $15 to $25 apiece.

Q. Did you have any grizzly bear claw necklaces?

A. Yes, sir, there was one especially, with very large claws. 4205

Q. How much was that worth? A. That one was worth, I should say, about $75.

Q. Did you have any others besides that very large claw? A. Yes, a few others; a couple of others.

Q. How much were they worth? A. They were small claws; they were worth about $20 or $25 apiece.

Q. Did you have any human teeth necklaces? A. Yes, sir.

Q. How many of those? A. Two.

Q. What were they worth? A. About $50 apiece; 4206
or more; one was worth more than that.

Q. Did you have any Indian cradles? A. Yes, sir.

Q. How many? A. Indian cradles or pappooses' cradles?

Q. Indian cradles is what I ask? A. Two.

Q. What were they worth? A. The two together?

Q. Yes? A. $75; I should think the two together would be about $125; there was one very elaborate with wampum beads.

Q. Did you have any saddle cloths? A. Yes, I had two saddle cloths.

Q. What were they worth? A. About $50. 4207

Q. Do you remember any Buffalo skulls? A. Yes, sir.

Q. How many of those? A. I remember one.

Q. What was that worth? A. It was worth about $25.

Q. Did you have any Buffalo horns? A. Yes, sir.

Q. How many pairs of horns? A. Three or four pairs, I guess; four pairs.

Q. Worth how much? A. $5 a pair, about.

Q. Did you have any Alaska spoons? A. Yes,

4208 sir, I had quite a number of those; they were carved.

Q. Yes. How many altogether? A. I believe about fifteen.

Q. What were they worth? A. Two or three dollars apiece or more; some were worth more than that.

Q. Do you remember any Indian horn spoons? A. Does it say trimmed with porcupine quills?

Q. No, it doesn't say anthing.? A. Yes, I had several Buffalo horn spoons in my collection; I remember that.

Q. How many of them? A. I don't know exactly
4209 how many I had, but I had several; I know I had them in my collection.

Q. Can you tell how many you had, at least? A. I had five or six, or more.

Q. What were they worth? A. Anything from a dollar up; some would be worth $3, $4, $5, or a dollar or a dollar and a half.

Q. Do you remember any Alaskan horns, carved? A. Powder horns, yes.

Q. How many? A. There was one; there was two; I had two.

Q. What were they worth? A. I think about $25 apiece.

Q. Do you remember having an Indian skull that
4210 was of the Flathead tribe? A. Yes.

Q. What was that worth? A. I think that would be a couple of hundred dollars; more than that; $250 I think I paid for it.

Q. Do you remember an Indian woman's suit trimmed with elk teeth? A. Yes, sir.

Q. How many elk teeth were on that? A. Over 200.

Q. What was that suit worth? A. $250 to $300.

Q. Do you remember any Buffalo skins trimmed with deer hoofs? A. Yes, sir.

Q. How many of those? A. I had two. 4211

Q. What were they worth? A. One was a unique piece; it was worth considerable money. There were several hundred hoofs, embroidered all over with porcupine; a large Buffalo the skin was.

Q. The two would be worth how much? A. Well. I don't know; the other one was probably worth a few hundred dollars, but that one was may be worth a few thousand dollars; that one couldn't be duplicated; that was the finest one that had been seen; an extraordinary value to that piece; it was unique.

Q. How much would the two be worth, fairly? A. Say $2,500; I would not have sold them for that; I would not have sold them for $5,000. 4212

Q. Did you have any Indian blankets, belts embroidered? A. Yes, embroidered with beads or porcupine quills; I had twelve or fifteen of these.

Q. Worth how much? A. Some $10, $15, $25 apiece; there was a couple there worth $25 apiece.

Q. Did you have any articles collected in the South Sea Islands? A. Yes, sir.

Q. What were they composed of? A. They were masks, lances, with carved handles; there were clubs, sort of idols.

Q. How many different articles in all? A. Oh, I don't know; I think I bought that for about $2,000.

Q. For the whole collection? A. For the whole 4213
collection; $2,000 or $1,800.

Q. Do you remember whether you had any Australian clubs and boomerangs? A. Yes, I had some.

Q. What were they worth? A. There were some of those made of tortoise shell, quite carved.

Q. How much were they worth? A. The whole collection?

Q. Yes? A. I should say $600 or $700.

Q. Did you have a collection that was from Africa? A. Yes, sir.

Q. What was that? A. Lances and assegais.

4214 Q. Anything else besides those? A. Yes; there was two dancing masks used for a sort of a medicine dance; and there was some African pipes.

Q. What was the African collection worth? A. $800 to $1,000.

Q. Did you have an Egyptian collection? A. That was composed of scarabee and small mummies; I don't refer to the large mummy; I am referring to some small figure which is the diminutive of a mummy; there was two mummified cats.

Q. Did you have any other articles besides those? A. No; some turquoises.

Q. What were they all worth? A. About $500
4215 or $600.

Q. Did you have any photographic apparatus? A. I had, yes. I had ten or twelve cameras.

Q. Any oil paintings? A. Yes, I had some oil paintings; some Indian subjects and a portrait of my child and a portrait of my wife and myself, and several Indian subjects.

Q. Any engravings or minatures? A. I had a number of old engravings from what you call the Napoleon 1st epoch, pertaining to Napoleon 1st, and some ivory miniatures.

Q. What do you put that all worth? A. That collection of oil paintings about $2,000.

4216 Q. And what about the Egyptian collection? A. I think I said $500 or $600.

Q. And the engravings and paintings, and photographic apparatus? A. I said about $2,000.

Q. And were all of these things that you have mentioned contained in the trunks that were shipped on board the *Bourgogne?* A. On those trunks, yes.

Q. Did you have any other property that was shipped on the *Bourgogne* that wasn't contained in these trunks of your collection? A. My wife had a gold watch of mine with her, and several other

things, probably some of my clothes in her own 4217
trunks, and some jewelry; she had some silver spoons and forks and knives. She had what you call a necessaire set; that was not in those trunks; that was in my wife's trunks.

Q. But I am speaking of your own property? A. That gold watch was mine, and also that set of silver ware I bought myself.

Q. What was the gold watch worth? A. That was a Jurgensen chronometer; it is worth in New York 3,500 francs; and there was a chain, too.

Q. And the jewelry? A. The jewelry I had, which I cannot determine the value, because many were heirlooms from my father and old pieces of 4218
jewelry that were given to me by my grandmother and grandfather years ago.

Q. Can you t any value on them? A. I couldn't tell you he value. I cared for them; I didn't want to sell them. I cared for them because they were heirlooms.

Q. You never got any of this property back? A. No, sir.

Mr. Haldane: This is all received under the objections that were urged at the beginning of the examination.

Adjourned to Thursday, October 2d, at 2 o'clock. 4219

New York Post Office, Oct. 2, 1902.

Adjourned to October 6, 1902.

4220 OCTOBER 6, 1902.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
Messrs. BENEDICT & BENEDICT,
Mr. HALDANE and Mr. KOPF.

Mr. Haldane moves to strike out all the testimony of the witness as to values because no foundation has been laid for the introduction of said testimony, and the witness has not shown himself qualified to testify as to questions of value.

4221 Motion denied. Exception.

CROSS-EXAMINATION OF GEORGE DESLIONS:

By Mr. Haldane:

Q. At the last examination you had a list of your collection here, did you not? A. There was a list here.

Q. And that, you testified, you had prepared from your memory, did you not? A. Yes, sir.

Q. Where is that? A. That list?

Q. Yes? Will you produce it?

4222 The list is produced. Each sheet is marked Petitioner's Exhibit 1 for Identification of this date.

Q. Is this list Exhibit 1 the original list that was made? A. This is the original list.

Q. Where was it made? A. In my house.

Q. Have you got a typewriter in your house? A. No.

Q. Where was this typewritten? A. What do you mean by the original list; one made by it?

Q. The question is just what I said; I asked, Have you got a typewriter in your house? A. No.

Q. I ask you again: Is this the original list that 4223
was made out as soon as you discovered your loss?
A. That is a copy of the original list.

Q. Where is the original?

The original is produced. Each sheet is marked Petitioner's Exhibit 2 for Identification of this date.

Q. Where was this original list made? A. In my house.

Q. When? A. Shortly after the sinking of *La Bourgogne*.

Q. When was the ship lost, do you remember? A. I think it was lost the 4th of July. 4224

Q. What year? A. In 1898.

Q. Where were you living then? A. In New York.

Q. Where? A. At the time of the sinking of the boat?

Q. At the time you made out this list? A. I was living in—about that time I went in Jersey, but I think that that list was made here in New York. I was living near Mount Morris Park.

Q. What street and number? A. I don't remember. Close to Mount Morris Park.

Q. I ask you again what street and number? A. I don't remember; it was close to Mount Morris 4225
Park. I don't remember exactly.

Q. Which side of the Park? A. The east side of the Park.

Q. Did the street front on the Park? A. No, the street was running with the Park. There is the Park and the street running here (indicating).

Q. The street runs north and south on the east side of the Park? A. Running from Madison avenue east.

Q. North of Mount Morris Park or south of Mount Morris Park? A. I believe it was One Hundred and Twentieth street, or something like that.

4226 Q. What number? A. 56.

Q. Are you sure of that? A. To the best of my recollection.

Q. What sort of a house was it; an apartment house? A. An apartment house.

Q. Did you have an apartment there? A. I had.

Q. To what date does this time refer when you had an apartment there? A. In the fall of that same year of the sinking of *La Bourgogne*.

Q. When did you move in there? A. Some time after the sinking of *La Bourgogne*.

Q. How long afterwards? A. I don't know; some time after.

4227 Q. Did you move in in August? A. I didn't—I don't remember whether it was in August; it was some time after.

Q. What is the most definite statement you can make with reference to the time when you went to live in this house No. 56 East One Hundred and Twentieth street? A. I say some time after the sinking of *La Bourgogne*. I didn't attach any importance to whether it was in August or September; that wasn't the question for me. The question for me was the sinking of *La Bourgogne*, and everything else was a very little matter to me.

Q. How long did you remain in that apartment?

4228 A. Several months.

Q. Did you remain there until after Christmas 1898 and 1899? A. I think I was there at Christmas.

Q. Do you know whether you were or not? A. Yes, I was there at Christmas.

Q. From whom did you rent that apartment? A. From the janitor.

Mr. Benedict: This seems to me is quite immaterial.

The Commissioner: I will allow these questions.

Q. Where did you move from when you went to 4229
that apartment? A. From West One Hundred and Third street.

Q. What number? A. About a block from the Central Park. I didn't attach any importance to the number of the house; it was immaterial to me. There was one thing present--that was *La Bourgogne*.

Q. Was it east or west of the Ninth avenue elevated road? A. I don't know; it was west of the Central Park.

Q. You know where the Ninth avenue elevated road is, don't you? A. I don't know; it was one block west from the Central Park. 4230

Q. What avenue is that one block west from Central Park? A. I don't know.

Q. Did you live west of that first avenue or east of it? A. I lived west one block from the Central Park.

Q. Did you live in the block between Central Park West and Manhattan avenue? A. That is in the second block.

Q. Then you lived west of Manhattan avenue, between Manhattan and Columbus avenue? A. It is immaterial to me; that is right probably.

Q. On which side of the street? A. South.

Q. You don't know the number? A. I don't know the number. 4231

Q. How long did you live there? A. A few months.

Q. Were you living there at the time of the loss of the *Bourgogne?* A. No.

Q. How many months did you live there? A. I said a few months.

Q. Where were you living when the *Bourgogne* was lost? A. When the *Bourgogne* was lost I was in a hotel.

Q. What hotel? A. In the Springler House, corner Fourteenth street and University Place.

4232 Q. Where was your family just prior to the sailing of the *Bourgogne?* A. My wife was—I was in Washington Square before she went west, and from Washington Square she went to her cousin.

Q. When did you leave Washingon Square? A. I believe in the neighborhood of the first—at the end of the month.

Q. How many days before the *Bourgogne* sailed did you leave Washington Square? A. From Washington Square the night before my wife went on board *La Bourgogne*—that is, she went to her cousin—she went on board *La Bourgogne* in the morning from Washington Square.

4233 Q. The morning of what day? A. You can figure it out. I don't know. *La Bourgogne* sank on the 4th, and I believe that was on Monday, and this was Saturday morning, wasn't it, that the *Bourgogne* sailed?

Q. I am asking you? A. I say——

Q. Did your wife go from Washington Square to the boat? A. Yes.

Q. On the morning of the second of July? A. The Saturday—the day the boat sailed.

Q. How long had you lived at Washington Square? A. We lived at Washington Square since the fall before, up to that date.

4234 Q. Did you have an apartment there? A. I had.

Q. What number Washington Square? A. I don't remember.

Q. Washington Square North or Washington Square South? A. South; I believe it was 98 or something like that.

Q. What was the name of the landlord of that property? A. I don't know the name of the landlord of the property.

Q. From whom did you rent it? A. From the lessor.

Q. What was his name? A. Marquette. 4235

Q. Why didn't you go back to Washington Square after the boat sailed? A. Because I sold my furniture there. I had nothing to do there any more.

Q. You had lived there for some years, had you? A. I had since the fall before; not some years.

Q. How many rooms did you have there? A. 1, 2, 3, 4, 5 or 6.

Q. Is that where you packed this collection? A. That is where I packed this collection.

Q. When did the collection leave the Washington Square apartment? A. On Friday.

Q. The first of July? A. The day before the boat 4236
started.

Q. What time in the day? A. I think in the morning.

Q. How many packages were there altogether? A. Well, there was eight or nine trunks, and my wife had a trunk, and I believe there was another trunk; there were probably a dozen trunks.

Q. Who took these trunks to the pier? A. The expressman.

Q. What was his name? A. Toussain Lagier.

Q. Where was his place of business? A. It was at the time in Twenty-sixth street, between Sixth and Seventh avenues.

Q. Is he there yet, do you know? A. I don't 4237
know.

Q. Was there more than one load of the goods? A. There was a big load of my collection.

Q. Was there more than one load? A. I don't know.

Q. Did you help load them? A. No, sir, I didn't.

Q. Were you there when they were loaded? A. I think I was.

Q. Do you know whether you were or not? A. I was.

4238 Q. Do you know whether there was more than one load? A. I didn't go and see on the street whether there was more than one or not.

Q. But do you know; yes or no? A. I don't. I didn't care whether there was one or a dozen.

Q. You saw them leave your place, did you? A. Yes, I did.

Q. How soon after that did you follow them to the pier? A. I didn't go to the pier at all that day.

Q. When did you; how soon? A. The day after.

Q. Was that Saturday? A. The day the boat sailed.

Q. Do you remember whether that was Saturday
4239 or not? A. Saturday morning I believe it was.

Q. Who went with you? A. To the pier?

Q. Yes? A. I don't know who went with me to the pier. I met my wife on the pier and my cousin and her sister and some other acquaintances.

Q. You didn't go with your family to the pier? A. I don't remember whether I went with them or not; I don't remember.

Q. You remember meeting them at the pier, do you? A. Oh, yes, distinctly.

Q. Where did this cousin live—your wife's cousin? A. The cousin, and I said also my wife's sister—my sister-in-law. The cousin lived at the time in Hancock street.

4240 Q. Brooklyn? A. New York.

Q. Where is that? A. That is near Bleecker.

Q. Did your wife and child come from Hancock street to the pier? A. I presume so. It was understood that we should meet there because she wanted to say good by to her cousin.

Q. Did you and your family remain in this Washington Square apartment after the packages left? A. Yes, we remained over night.

Q. Your whole family remained in the apartment until the morning of the day the boat sailed; is that right? A. Yes, as far as I remember, yes.

Q. What time did you leave, and your wife and 4241
child? A. I went out in the morning.

Q. What time? A. I don't know; some time in the morning.

Q. How soon after breakfast? A. Oh, I don't know; seven or eight o'clock I had to go out.

Q. Do you remember having your breakfast that morning with them? A. I don't remember.

Q. When you left there what was the understanding as to what they were to do? A. That they should meet me in her cousin's house with her sister, or at the pier at nine.

Q. What time did you meet them at the pier? A. About that time. 4242

Q. What time did the boat sail? A. I think ten or something like that; after ten.

Q. Who was the first person you saw when you got down to the pier that you had any conversation with? A. That was the big Turk.

Q. Was he a friend of yours? A. I knew him.

Q. Did you see him before you saw your wife and daughter? A. I saw him because he was almost in the entrance of the pier, and he saluted me.

Q. What did you do down there from the time you arrived until the boat sailed? A. After I shook hands with the big Turk and saluted him I went to look after my wife and she was near the bag- 4243
gage. I had to stay by the baggage and see that the baggage should be put on board the boat.

Q. What do you mean by the baggage? A. I mean the baggage-trunks.

Q. Do you call all this stuff that you had there baggage? A. I call trunks and boxes, whatever you want. They were in the shape of trunks and boxes; freight is what they were.

Q. On your direct examination you said that these trunks and cases were freight, didn't you? A. That is what they were—freight, certainly.

4244 Q. Do you know what the difference is between freight and personal baggage? A. Personal baggage was the trunks of my wife which went with her; those were sent as freight to Havre, and her trunks were to go to Paris with her.

Q. What were they, cases or trunks? A. One, for instance, was an immense sample trunk.

Q. What was it made of—that one? A. Wood and iron.

Q. Do you call a package or a receptacle made of wood and iron a trunk? A. That was a trunk; that is what you call a sample trunk, that one.

Q. Where did you get that made? A. I didn't
4245 have it made.

Q. Where did you get it from? A. I bought it.

Q. Where? A. In Eighth street and University place.

Q. How big was it? A. I don't know how big; it took about four men to carry it downstairs when it was loaded full of stuff—my collection.

Q. Can't you give the Commissioner any idea of the size of it in feet? A. I guess it was pretty near the size of this table (referring to Commissioner's desk)—one of those extraordinarily large sample trunks, a very large one it was. I remember because it was hard to take downstairs and upstairs,
4246 and when it went in my house it was hard to put it upstairs, to fit it from the balustrade to the wall. It took four men to take it down; that I remember.

Q. That is one. Now describe another of these cases? A. They were very large trunks and cases; one was longer than that desk and almost as large (referring to Commissioner's desk). I am no carpenter.

Q. Were these cases or trunks all made of wood? A. Yes.

Q. Were they painted? A. One was painted green.

Q. What were the rest? A. I guess they were a 4247
darker color.

Q. I don't want you to guess; I want you to state? A. They were dark, I am positive.

Q. Where did you get them? A. I told you before; I bought the large one the corner of Eighth street.

Q. Where did you buy all of them? A. The other ones I bought many years ago.

Q. All of them except this one? A. All of them except this one.

Q. Where did you keep them? A. In my house.

Q. In a flat? A. In the flat, in the storage room.

Q. How many? A. All of them. 4248

Q. How many? A. All of them.

Q. Well, how many? A. Ten or twelve; as many as were there.

Q. How many were there there? A. I said before.

Q. How many were there there? A. How many did I say before?

Q. I can't help you out on that; how many were there? A. As many as I said before.

Mr. Benedict: Give the number.

A. Nine or ten or probably a dozen.

Q. Well, which? Nine or a dozen? A. A dozen altogether. 4249

Q. Are you sure of that? A. Positive.

Q. And all that size that you have stated, the size of the Commissioner's desk? A. All that size?

Q. Yes. A. I didn't say that.

Q. What did you say? A. If you will take a measure I will show you the size. I am no carpenter.

Q. When you stood up alongside of one of them how high up would it come on you? A. Some that high and some a little—the one that was as high as

4250 the desk was narrow and as long as that desk and not quite that high (indicating).

Q. They came up to about your hip? A. I don't know.

Q. Stand up alongside the desk and show?

Witness stands up.

Q. That would come up to the top of your thigh? A. I say one was about that high and another one was lower (indicating).

Q. What about the other ten? A. They were all very large trunks, every one of them.

Q. Did you have them all in your storage place
4251 at Washington square? A. Yes, I did.

Q. All the time that you lived there? A. All the time; I didn't pay a visit every day to those trunks.

Q. Did you move them to Washington square with you? A. I did.

Q. From where? A. From the country.

Q. Where? A. Long Island.

Q. Where? A. Dutch Kill, Long Island.

Q. What is that; a village or a town? A. I don't know; they call it Dutch Kill.

Q. How long did you live there? A. During the summer prior to that.

Q. Of 1898? A. During the summer prior to
4252 the sinking of *La Bourgogne*, the summer before. I came in Washington square in the fall and spent the winter there up to the time the *Bourgogne* started.

Q. Did you have this collection with you at Dutch Kill? A. I had.

Q. In these same trunks did you take it? A. Yes, sir, in those same trunks I took it and moved by the same man.

Q. What sort of a house did you have at Dutch Kill? A. A cottage, a private house.

Q. How many rooms? A. There was a parlor 4253
on the ground floor——

Q. How many rooms? A. I don't know.

Q. Just think and tell us? A. One parlor, one sitting-room, one dining-room, one kitchen and one pantry, and then there was a little house there to throw in anything that you wanted to. Then there was one stairs to go upstairs, with a little hall, a sleeping-room, two, three, four, five sleeping-rooms upstairs. I guess about ten rooms altogether—five and five.

Q. From whom did you rent that house? A. From a gentleman.

Q. What was his name? A. Thiers. 4254

Q. Did he live there in that town? A. Yes, he lived there in that town.

Q. Was this collection unpacked in that house? A. In that house?

Q. Yes. A. Part of it.

Q. What was done with the rest? A. It remained in the trunks; the house was too small.

Q. Where did you keep the trunks? A. In the room.

Q Upstairs or down? A. Some upstairs and some down in the cellar.

Q. Where did you keep part of the collection that was unpacked during the summer preceding 1898? 4255
A. I spent the summer in the country, and the fall and the winter and spring in Washington square, and the *Bourgogne* sailed in July.

Q. You are speaking of the summer of 1897? A. The summer before the sinking of *La Bourgogne*.

Q. The summer of 1897? A. All right.

Q. How many months did you stay at Dutch Kill? A. Up to the time I went to Washington square.

Q. How many months? A. I don't know; the summer.

1424

4256 Q. What time did you move there? A. In the spring.

Q. What month? A. I don't know; April or May.

Q. When did you leave there? A. When it was getting too cold to live in the country we moved to Washington square.

Q. What month did you move? A. I don't know.

Q. Where was the collection taken from to Dutch Kill? A. From Twenty-third street.

Q. East or west? A. West Twenty-third street.

Q. That is this borough, Manhattan? A. In New York.

4257 Q. What number? A. 165.

Q. Had you been living there? A. I was.

Q. How long? A. The winter before.

Q. This was the winter of 1896-1897? A. The winter before that summer. From there I went to the country in the spring.

Q. What did you have at 165 West Twenty-third street; an apartment? A. Yes, sir.

Q. Who lived there? A. I lived there.

Q. Who else? A. My wife and child.

Q. How long did you live there? A. From the fall before.

Q. From the fall of 1895? A. From the fall be-
4258 fore that. I spent the fall and winter and spring there and then I went in the country.

Q. But you understand, in order to make this intelligible we have got to have dates. Do you mean the fall of 1895 that you moved to Twenty-third street? A. No, the fall—I went in the country in the spring and when I went to the country I was living in Twenty-third street. I moved there that spring of that same year.

Q. What year? A. I don't know; two years before the *Bourgogne*, very likely—one year before *La Bourgogne*—I don't know.

Q. Where did you live before you went to Wash- 4259
ington square? A. In Mexico.

Q. Before you went to Washington square? A. I came from the country to Washington square.

Q. From Dutch Kill? A. From Dutch Kill, of course.

Q. And you moved to Dutch Kill from West Twenty-third street in April or May? A. In the spring of 1897.

Q. Where did you live before you lived in Twenty-third street? A. In Mexico.

Q. What part of Mexico? A. New Mexico.

Q. Whereabouts in New Mexico? A. Different parts. I lived outside of Santa Fe. 4260

Q. Where else? A. Different parts; I was traveling; many times I was camping.

Q. When you weren't camping where did you live? A. We will say in Santa Fe.

Q. Where else; was that the only place that you had any permanent residence? A. Yes, sir, that was my *pied a terre*.

Q. How many years did you live in New Mexico? A. Probably a year or something like that; about a year.

Q. Where did you move from when you went to New Mexico? A. From Europe to Philadelphia; from Philadelphia to Mexico. 4261

Q. Where did you live before you went to New Mexico? A. Philadelphia.

Q. How long did you live there? A. Do you mean in Philadelphia?

Q. Yes. A. Two months.

Q. Where? A. That I don't remember exactly. I am not familiar enough with Philadelphia.

Q. Did you live in a hotel or in a private house? A. I was in a hotel boarding house.

Q. Were your wife and child with you in New Mexico? A. Yes.

4262 Q. This apartment that you afterwards took in Twenty-third street and this apartment that you had in Washingon square you furnished your self, did you? A. I did.

Q. When did you go to Philadelphia? A. About one year before I went to New Mexico.

Q. Sure of that? A. Positive.

Q. Then where were you between the time that you left Philadelphia and the time you went to New Mxico? A. On the sea and in Europe.

Q. I mean after you left Philadelphia and before you went to New Mexico where were you? A. In the train.

4263 Q. Is that all? A. That is all.

Q. You went straight from Philadelphia to New Mexico, did you? A. Yes.

Q. And you were in Philadelphia about a year? A. I never said such a thing.

Q. How long were you in Philadelphia? A. I said two months.

Q. From where did you come to Philadelphia? A. From Europe.

Q. What part of Europe? A. From Anvers.

Q. How long had you been in Antwerp before you left for America? A. A few weeks, I guess; I don't remember.

Q. Were your wife and child with you there? A.
4264 They were.

Q. Where had you been before you went to Antwerp? A. In Bruxelles.

Q. How long were you in Brussels? A. A few days.

Q. Where had you been before you went to Brussels? A. In Liege.

Q. How long were you there? A. A few days.

Q. Where had you resided before you went to Liege and Antwerp? A. Nowhere; I was traveling.

Q. With your wife and child? A. With my wife 4265
and child.

Q. Did you have those cases and trunks with you? A. Yes.

Q. All the time? A. All the time, with me all the time; they were sometimes in the depot, of course.

Q. How long before the time when you were at Antwerp did you have any permanent home? A. A year and a half.

Q. Where was that permanent home? A. That was about eighteen or twenty months before, that I left America to go to Europe.

Q. Where was that permanent home that you 4266
had before you went to Antwerp? A. Here in this country.

Q. Where? A. In Fourth avenue.

Q. Is that the best you can do? A. That is the best I can do.

Q. Can't you give us the number nor the street that it was near? A. That was near Fourteenth street and Fourth avenue.

Q. What year was that? A. That was just before I left for Europe.

Q. What year was it? A. It was after the World's Fair, the Chicago Fair.

Q. Were your wife and child with you when you 4267
lived on Fourth avenue? A. Of course.

Q. And all this collection? A. Yes.

Q. In the same packages? A. I don't know if they were in the same packages.

Q. What do you say about that? A. I don't know if they were in the same packages. I don't suppose I was bound to carry them all over the world in the same packages.

Q. You don't know whether it was or not; is that it? A. When I moved——

4268 Q. Do you know? Yes or no—whether it was or not? A. What do you mean?

Q. I mean just what I say: Was it in the same packages? A. Those very same trunks that they were when they were on board the *Bourgogne?* In some, yes; but in others I stated before I have bought some since that.

Q. When you lived on Fourth avenue was this collection unpacked? A. Certainly.

Q. What sort of a residence did you have on Fourth avenue; a private house or a flat. A. That was a private house; four rooms and they could all be connected in one room.

4269 Q. You had four rooms in a private house? A. Yes.

Q. You didn't have the whole house? A. No, the first floor.

Q. Only one floor? A. Only one floor.

Q. Did you keep house there? A. Yes, I kept house there.

Q. What did you do with these trunks and cases? A. What did I do with them? I didn't do anything with them; I had them there.

Q. Where; in the cellar? A. In the storeroom or in the cellar.

Q. Which? A. If I had something in I would
4270 put them where they wouldn't bother me; in a storeroom or cellar, to put them out of my way.

Q. Do you remember which you did, whether you put them in your storeroom or in the cellar? A. I don't; that is immaterial to me.

Q. How long did you live on Fourth avenue? A. I don't know.

Q. Can you give us the number of the house? A. I don't know; it was between Thirteenth and Fourteenth streets, on Fourth avenue.

Q. Where did you live before you went to Fourth avenue? A. In Fourteenth street.

Q. East or west? A. West. 4271

Q. What number? A. 300 and something; between Seventh and Eighth avenues.

Q. On which side of the street? A. 365 I think; the south side.

Q. What was that? A. There was a store there.

Q. Did you have an apartment there, or some rooms in a house? A. I had at one time an apartment there, and also an apartment on Twelfth street, with a store.

Q. What sort of a residence did you have on Fourteenth street? A. It was a very large place up there.

Q. How many rooms? A. There was only one 4272
room in the whole of it; except a partition which I built myself.

Q. Did your wife and child live with you there? A. Sometimes.

Q. Did you keep house or did you board? A. I was living at an apartment besides that in Twelfth street.

Q. At the same time? A. At the same time.

Q. What did you do with this collection while you had this place on Fourteenth street and the apartment on Twelfth? A. Put them on the wall and exhibited them.

Q. On Fourteenth street? A. On Fourteenth 4273
street, and some also in Twelfth street.

Q. Did you give public exhibitions at that time? A. I stated before that I was a dealer and collector.

(Q. Repeated) Did you give public exhibitions at that time? A. If anybody wanted to see it they were welcome; I didn't charge them.

Q. What did you mean when you said you put some of them on the wall to exhibit them? A. I wanted to see them myself; for my own benefit.

Q. When you lived on Fourteenth street and had this apartment on Twelfth street did you have the

4274 same collection that you afterwards lost? A. That collection that I lost was considerably enlarged; the fact that I bought some trunks shows that; I collect every day; every day I was collecting.

Q. How long did you live on Fourteenth street and Twelfth street? A. I don't know; during the fall, winter and spring; I was in the habit of remaining in the city during the winter, and in the summer I would go in the country.

Q. How many seasons, or winters, did you live in Twelfth and Fourteenth streets? A. Only one.

Q. Where were you just before you moved to Fourteenth and Twelfth streets? A. On the begin-

4275 ning of Fourth avenue.

Q. You had lived twice on Fourth avenue? A. I had lived twice on Fourth avenue; this side of the Cooper Institute.

Q. How long did you live there? A. I lived there two seasons.

Q. Two winters? A. Two winters.

Q. What number was that? A. That was—I don't know what number that was.

Q. What was it, a private house or an apartment house? A. It was a sort of a private house.

Q. How many rooms did you have? A. Five rooms and one kitchen.

4276 Q. You kept house there, did you? A. I kept house there.

Q. Whereabouts did you keep this collection when you lived close to the Cooper Institute? A. In my parlor and other rooms.

Q. Unpacked? A. Yes, unpacked.

Q. All unpacked? A. All unpacked; what I could put on the walls, and the balance I would keep in the trunks.

Q. How many trunks did you have to leave packed? A. I don't know.

Q. How many trunks did you have at that time? 4277
A. I don't know.

Q. Did you have ten? A. I don't know.

Q. Did you have three? A. I don't know.

Q. What year was it that you lived close to Cooper Institute? A. Probably ten or twelve years ago; twelve years ago or probably more, or something like that.

Q. Which was it, ten or twelve? A. About twelve years.

Q. Have you told us where you were all the time from that time to the present? A. Yes, you have everything now.

Q. How came it that you didn't sail on the *Bour-* 4278
gogne yourself? A. There was a party that owed me some money and promised to pay me either that day or a few days after, and as I didn't see him on the pier we decided that my wife would sail with one child and I would stay here with one child, with the oldest one, and I was to sail with the next boat.

Q. Up to the time that you failed to meet this man at the pier you intended to go on the *Bourgogne*, did you? A. I wanted to sail on the *Bourgogne*.

Q. Had you taken your passage? A. No, I had not taken my passage. 4279

Q. You never did engage any passage for yourself on that ship? A. Not on that ship.

Q. Nor for your oldest child? A. Not for the oldest child, either.

Q. When did you engage the passage for your wife? A. A few days before; I don't remember; may be a week before; I don't remember exactly; some time before.

Q. By what name did you engage passage for her? A. Mathilde Faivre and child.

4280 Q. Where did you engage the passage? A. Near the Battery; Martin Gasser & Company.

Q. Did you go there yourself? A. I did; my wife was with me.

Q. Did you say anything about your being a passenger yourself? A. There?

Q. Yes. A. No, I went there with my wife to take a ticket a week before, or five or six days, or ten, before, I don't know; in fact, she intended to sail before that; we intended to sail a month before.

Q. With the collection? A. Yes, it was understood that I took my collection.

4281 Q. How much did you pay for the passage? A. I don't remember.

Q. What class did she go? A. It was a third-class ticket.

Q. Why did you take passage in the name of Mathilde Faivre? A. Because she wanted to; she wanted to surprise her mother when she got there. She though if she was registered under my name—

Q. Was that her maiden name? A. That was her maiden name.

Q. Have you been married more than once? A. Yes.

Q. When did you make arrangements for the
4282 sending of this collection as freight? A. I said before, the trunks were sent there on Friday.

Q. This is a perfectly plain question; when did you make your arrangements with the Steamship Company for the shipping of this collection as freight? The day the boat sailed; in the morning there with Mr. Faguet.

Q. That was the first time you made any arrangements for the shipment of this collection, was it? A. Yes, as I remember.

Q. What did you say to him? A. I said to Mr. Faguet that those trunks were to go up to Havre,

and the man had weighed the trunks and had reg- 4283
istered them to Paris.

Q. How did you find that out? A. Because he wanted me to pay to Paris, and I objected, and said no.

Q. How much did he ask you to pay for them to Paris? A. I think it was eighty something dollars, or something like that; less than a hundred dollars.

Q. How came your attention to be attracted to these trunks of yours? A. It was understood that the trunks should sail with that boat.

Q. But you were with your wife and daughter and all these friends? A. Yes.

Q. How came your attention to be attracted to 4284
these packages? A. I think there was one man there—I had to wait for my trunks, for my turn to have those trunks shipped; I said, "I want my trunks shipped," and he said, "You wait until I am through with the other trunks."

Q. What other trunks? A. Some other people's trunks; other trunks that were there on the pier; I don't know what they were; some other trunks; I said, "I want those trunks shipped," and he said, "You wait until your turn comes," and he said, "When your turn comes I will notify you." And he said, "Now is your turn; where do you want your trunks to go to," and they put the trunks on the 4285
scale and weighed the trunks there.

Q. And at that time you told them you wanted them to go as freight? A. Certainly.

Q. And you didn't get there till nine o'clock? A. I was there about nine, yes.

Q. And the boat left about ten? A. About half past ten.

Q. You said ten a while ago. A. It left at half past ten; it is a matter of record.

Q. What time did the collection leave your house? A. It was the day before.

4286 Q. What instructions did you give to the expressman of what was to be done with them? A. To deliver them to the pier; that they were to sail with *La Bourgogne*.

Q. As freight, or as baggage? A. As freight; they couldn't go as baggage.

Q. Were there many people on the pier that morning? A. Many, yes.

Q. How many? A. I didn't count them.

Q. Hundreds? A. I didn't count them.

Q. Where were the packages? A. Near the scales; near the others.

Q. That is quite a long pier? A. That is quite a
4287 long pier.

Q. Where were your packages? A. Probably in the center.

Q. Did you say probably in the center? A. Probably in the center; I didn't measure.

Q. What letter were they under? You know they have compartments there with the letters, don't you; the initial letter of the passenger's name; you know that, don't you? A. I don't understand the question.

Q. Were these trunks or packages put in the compartment under the letter "D" or the letter "F"? A. I don't know.

4288 Q. Didn't you notice that? A. They gave me a countermark after the trunks were weighed——

The Commissioner: Isn't that lettering for the incoming baggage; not the outgoing; that is my experience.

Mr. Haldane: That may be.

Q. At the time you say they gave you this countermark you were told that these packages were to go as freight, were you? A. As freight, yes.

Q. You got no bill of lading? A. I got no bill of lading; I got simply a countermark, a piece of

yellow paper; it was handed to me in the presence 4289
of Mr. Faguet, and I believe he gave it to Mr. Faguet and Mr. Faguet gave it to me. Mr. Faguet was here and the man was there (indicating). And Mr. Faguet said it was all right. I said, "What is this," and he said, "That is all right."

Q. How much did you tell Mr. Faguet those packages were worth? A. Over a hundred thousand dollars; a hundred thousand dollars I said.

Q. How much did he charge you for sending them to Havre? A. About $40 or $39, I don't know; about $40.

Q. Did you pay Mr. Faguet yourself? A. No, I gave it to the man in the office, in the presence of 4290
Mr. Faguet.

Q. Did he give you a receipt? A. No; I don't remember that he did; I remember he gave me this countermark; this paper.

Q. What did he say when you paid him the money? A. I think I asked about a receipt, and Mr. Faguet said that was all right. I was handed this piece of paper, and he said, "That is all right; you needn't worry about it, I will speak to the captain about it myself." That is what Mr. Faguet told me.

Q. When you went to Gasser's for this ticket did you get the ticket, or an order for the ticket? A. 4291
He gave the ticket; a ticket and a half; one-half for the child; and the ticket for my wife.

Q. How old was the child? A. The child was probably two years; two or three years.

Q. Aren't you mistaken about that? A. The child wasn't more than four years any way.

Q. Was it over eighteen months? A. It was, yes; sure it was; the child was over eighteen months.

Q. Did you get another ticket about that time at any other place? A. For the child? For me?

Q. For anybody, on this line? A. No.

4298 Q. No street or number? A. No; that is in the country; Pérache.

Q. What is that; a commune? A. A commune, or a county; that is the name of the county.

Q. Is that your aunt's maiden name or her married name? A. Her married name.

Q. What is her husband's name? A. Jules.

Q. What is his business? A. He is a dealer in merchandise like wheat, oats, etc.

Q. A dealer in farm produce? A. Well, that is of France.

Q. Had you lived with them at any time? A. I did; she is my godmother.

4299 Q. How many years did you live with them? A. I used to spend the summer with them.

Q. In the winter where did you live? A. With my folks.

Q. In the city? A. Yes.

Q. Was your father's name Deslions? A. Yes.

Q. What was his business? A. He was an officer.

Q. And he lived at Lyons? A. Yes.

Q. Was he in any other business? A. No, sir, he was a French army officer.

Q. Retired, or in active service? A. Both; after he got through being active he was retired.

Q. When you came to this country what line did
4300 you come by? A. I forget the name of the boat; it was the French line.

Q. This same company that the *Bourgogne* belonged to? A. I don't know if it was the same; sailing from Havre; the Compagnie Transatlantique.

Q. Don't you remember the name of the boat? A. I don't.

Q. What did you bring with you in the way of baggage? A. A valise and a leather trunk.

Q. Did you have any companion to come with

you? A. I met many people on the boat; but I 4301
didn't sail with any special friend, no.

Q. Had you any friends in this country before you left France? A. I had, yes.

Q. Who? A. I don't know where they are.

Q. Who was it? A. I don't know where they are; I know I had some friends in this country.

Q. I am not asking you where they are; I am asking who they are? A. The name?

Q. Yes. A. There was one fellow by the name of Louis LeRoy.

Q. Did you form his acquaintance on the boat? A. No, he was in this country; I never saw him; I don't know where he was here. 4302

Q. Did you ever see him? A. I never saw him.

Q. Who else did you know in this country? A. Many people.

Q. When you came here? A. Nobody.

Q. Nobody but this man LeRoy? A. I didn't know him; I knew he was here, and there is many other fellows that I know are here; but I didn't see him.

Q. Did you keep up the acquaintance here in New York with any of these people whose acquaintance you formed on the boat? A. Oh, a few.

Q. Who? A. I don't remember, now; I didn't pay any attention; some went to San Francisco and 4303
some went to Chicago; I don't know.

Q. You didn't keep up your acquaintance with any of them? A. No.

Q. How did you know where to go when you landed? A. I think if any man is no fool he could get up the street.

Q. Where did you take up your residence? A. I went to the Hotel Martin, it used to be University place and Ninth street; generally all French people went there.

4304 Q. How long did you stay there? A. A few weeks.

Q. What were you doing during those few weeks? A. Nothing; nothing.

Mr. Benedict: What difference does all this make?

Q. Where did you go when you left the Hotel Martin?

Objected to as immaterial.

The Commissioner: Go a little further and see where you come out.

4305 A. I don't remember.

Q. How long did you remain in New York? A. Fourteen years.

Q. When did you first go into any business after you arrived in New York? A. Some time after.

Q. How long after? A. I don't remember.

Q. One year? A. I don't know.

Q. Two years? A. I don't know.

Q. Three years? A. I don't remember, I said.

Q. Can't you give us any idea at all about when you started as a collector of curios? A. Some time after I came to this country.

Q. How many years after you came to this coun-
4306 try? A. I don't remember.

Q. During these few years after you came to this country how were you employed? A. I wasn't employed.

Q. Living a life of ease were you, doing nothing? A. I didn't say that I was doing nothing; that doesn't follow; I was my own boss.

Q. You don't understand the meaning of the word "employed," I will change the form of the question, because you don't understand me. What were you doing all those years? A. I don't remember; speculating, buying some curios.

Q. What is the first day that you can say you 4307
were engaged in anything for the purpose of making a living? A. I don't remember the first day I started to make a living.

Q. You testified on your direct examination that you had been engaged in collecting these specimens and this collection about twelve or thirteen years, didn't you? A. Let me see the minutes please, and see if I said so.

Q. No, I will not. A. If I said so it is so; whatever I said there, it is so.

Q. How many years is it since you have begun to make this collection? A. Twelve or thirteen years.

Q. Then you came to America fourteen years 4308
ago? A. Yes.

Q. When you begun to make this collection did you do it as a matter of business, or for your own amusement? A. Both; collecting and speculating on it.

Q. Which of said articles in all this collection was the first that you bought? A. Would you remember that time? Well, I do remember; it was some tobacco pouches, bow and arrows that I bought.

Q. That was about a year after you got here, was it? A. About.

Q. Had you then formed the purpose of making 4309
a collection? A. I had then formed the idea of making this collection; I formed the idea when I came to this country; in fact, I had the idea to collect Indian curios before I came to this country.

Q. Where did you buy those tobacco pouches? A. I don't know; in some store going around the city.

Q. Is that one of the articles that you have mentioned in this list of yours? A. I don't know; probably; of course, it has to be necessarily one of those articles.

4310 Q. This article that formed the beginning of your collection was a tobacco pouch? A. I don't know; I didn't say that.

Q. What was it? A. I didn't say anything of that kind; you asked me what was the first article I bought, and I said a tobacco pouch and bow and arrow; but that doesn't show that this was to put in this collection.

Q. Did you buy them all at the same place? A. I don't know.

Q. Is it in this collection, or not? A. I don't know.

Q. Taking this collection that you say was lost
4311 on the *Bourgogne*, which article in that collection was first purchased by you? A. I don't remember.

Q. Did you keep a list of your purchases? A. I did keep books, not a list.

Q. Where are they? A. On board the *Bourgogne;* in the bottom of the sea.

Q. You shipped your catalogue with the collection? A. Catalogue and business books.

Q. Did you have any catalogue? A. I had.

Q. Did you have any duplicate of it? A. Not that I remember.

Q. Did you keep a catalogue in a book? A. The catalogue was a book itself; I intended to publish
4312 it; I don't know if you understand the meaning of catalogue.

Q. Well, never mind. When did you begin to make a catalogue? A. Years ago.

Q. As soon as you begun to purchase things? A. Certainly.

Q. Was the catalogue that you say was lost on the *Bourgogne* the original book in which you begun to make the entries? A. I will have to go in some detail on that.

Q. No; was that the original book? A. On that catalogue was all the articles which belonged——

By the Commissioner: 4313

Q. That isn't the question; the question is was that the original book? A. Yes.

By Mr. Haldane:

Q. You never kept any copy of the book, did you? A. No copy, but many slips; sketches.

Q. Where are they? A. I don't know where they are; they were in the trunks in the bottom of the sea.

Q. Were these books in the trunks that the collection was packed in, or in your wife's private baggage? A. With the collection. 4314

Q. You had a great deal of correspondence, did you? A. I had.

Q. Where is that? A. With the collection.

Q. How long is it since you purchased any additions to this collection? A. I don't understand the sense of that.

Q. When was the latest date that you purchased anything for this collection? A. May be a week before, or probably a few days before the *Bourgogne* sailed; before I packed them.

Q. What was it? A. Different articles.

Q. What? A. Some moccasins; some tobacco pouches; some arrows; some minature teepees. 4315

Q. Where did you buy them? A man came to my house with a bundle of that stuff and asked me if I would purchase them.

Q. Dealer? A. No; probably an ex-collector; I don't know; how he came in that position I don't know.

Q. How much of a purchase did you make of him? A. Oh, it was only a small purchase; I think only two or three hundred dollars.

Q. Did you know the man before? A. No, I didn't know that man before.

4316 Q. How did you pay him; in cash or by check? A. Oh, in cash.

Q. Where were you living then? A. In Washington square.

Q. Was anybody present but yourself and the man? A. My wife.

Q. Do you know whether anybody else was there or not? A. No, I don't remember.

Q. Where did you get that money from, that you paid this man? A. From speculating; from buying and selling some articles.

Q. Is that the nearest you can come to the amount you paid him? Two or three hundred dol-
4317 lars? A. Yes.

Q. You have no recollection of what the exact amount was? A. That was over $200; I believe $270 or $280, or something like that.

Q. Which of the articles have you testified to the other day was it that you paid him this two or three hundred dollars for? A. I don't know; if I had them before me I would tell you.

Q. How many miniature teepees did you buy of this man? A. Oh, one or two; I don't know, one; there was one miniature teepee.

Q. How much have you charged for that miniature teepee in your testimony the other day? It
4318 isn't mentioned at all in my testimony; I forgot it; I told Mr. Benedict that there were several articles that I forgot; it isn't mentioned at all there.

Q. And that is one of the things you have not mentioned, is it? A. That is one.

Q. How much did you pay for any other article that you bought of that kind that day? A. I bought all in a bunch.

Q. And in order to make up the bunch you had to put a price on the different articles? A. No doubt; I probably did that myself.

Q. You bought some moccasins? A. Yes.

Q. How many? A. I don't know. 4319

Q. A dozen? A. I don't know.

Q. Two dozen? A. I don't know.

Q. How much did you allow for the moccasins in making up the $200? A. I don't know.

Q. What else did you buy of that kind that day? A. I don't know; some other articles, some tobacco pouches.

Q. Did you buy some bows and arrows? A. Not that I remember; may be there was, but I don't remember.

Q. Didn't you say a few minutes ago that you bought some bows and arrows of him? A. I don't remember if I said so. 4320

Q. Did you buy any bows and arrows of that man? A. I don't know.

Q. What else did you buy of him, that you remember? A. There was a dancing belt made of feathers, and things like that, I believe.

Q. Do you know whether there was or not? A. Yes; there was.

Q. How much did you allow him for that? A. $25.

Q. What sort of a belt was that, an Indian belt? A. Yes.

Q. What tribe, do you know? A. Yes.

Q. What was it? A. Sioux.

Q. There are several tribes of Sioux, aren't there? A. There are; there is no distinction in any article of the Sioux from any other; there is no man can tell you what kind of Sioux an article is; what tribe it is. 4321

Q. No expert can tell you what particular tribe of Sioux the articles come from? A. No.

Q. What other articles did you buy? A. Some tobacco pouches.

Q. How many? A. I don't know; I paid for the

4322 whole thing in a bunch, $285, or something like that.

Q. Did you buy a dozen, or something like that? A. I don't remember.

Q. Did you buy a hundred? A. I don't remember.

Q. What else did you buy of him? A. I don't remember.

Q. All you remember is you gave him $270 or $280. A. That is all.

Q. What was the man's name? A. I don't know him.

Q. Where did he come from? A. I don't remem-

4323 ber.

Q. Didn't you ask him? A. I didn't ask him; he came from the street somewhere.

Q. You didn't ask where he got these goods? A. No.

Q. What did he carry them in? A. I don't remember; a bundle.

Q. Or a basket? A. No; no basket.

Q. How was he dressed; was he an American? A. Probably; I didn't ask him his origin papers.

Q. Couldn't you tell whether he was an American or a Frenchman? A. No, or an Irishman; I don't remember.

4324 Q. When were you naturalized? A. Eight or nine years ago; something like that.

Q. Where? A. In New York.

Q. What court, do you remember? A. I don't remember what court; it was in the City Hall building.

Q. Did you buy all this man had? A. Yes, I bought the bundle he had.

Q. Everything that he had? A. Yes.

Q. How many days was that before you shipped 4325
these goods? A. I don't know; a few days before.

Adjourned to Thursday, October 9 at two o'clock.

NEW YORK POST OFFICE, Oct. 9, 1902.

Adjourned to Monday, October 13, 1902, at 2 P. M.

Met pursuant to adjournment; present as before.

4326

NEW YORK POST OFFICE, Oct. 13, 1902.

CROSS EXAMINATION OF GEORGE DESLIONS CONTINUED:

By Mr Haldane:

Q. I believe you said that when you delivered this collection to the Company you got a countermark. Did you say you got a countermark? A. I say I had a countermark. I said they gave me a countermark.

Q. What did you do with it? A. I gave it to my wife. 4327

Q. What for? A. Because she had a satchel to keep papers and everything.

Q. Where was your wife ticketed to? A. To Paris.

Q. Wasn't her ticket to Basle? A. Her ticket was to Paris.

Q. Where were you to meet her and get the countermark? A. I was to meet her in Paris.

Q. Who was to get the collection from the Company? A. I was.

4328 Q. After you met her in Paris? A. After I met her in Paris.

Q. Then where were you going? A. To get my collection in Havre.

Q. Just tell us, if you please, what that countermark was? A. It was a yellow paper with a number on it.

Q. What number was on it? A. I don't remember exactly.

Q. Was there anything on it besides a number? A. Not that I remember.

Q. Have you no recollection except that there was a number on it? A. I am positive there was a
4329 number on it.

Q. Was there anything on it besides a number? A. Not that I remember.

Q. That is all you do remember about it; a yellow paper with a number on it? A. Yes.

Q. How many of the packages had similar marks on them, to that? A. Every one of the trunks.

Q. Including your wife's personal baggage? A. No.

Q. Your wife had a satchel and a trunk of her own? A. Yes, but that was going with her to Paris.

Q. They didn't have any countermark on them? A. They were going with her; my wife's trunk had
4330 nothing to do with that lot.

Q. Had you a countermark for hers? A. I don't know what was on her trunk.

Q. Did you see the marks that went on the packages; did you see the yellow paper on the packages? A. Those were not packages; they were trunks.

Q. Whatever they were, the cases or trunks, did you see that same sort of a yellow paper on them? A. Yes.

Q. And the same sort of yellow paper was on your wife's personal baggage? A. I don't know.

Q. Did you see it? A. I don't know what was 4331
on her trunks.

Q. Did you see her trunks? A. I saw her trunks, but her trunks were on board of the steamer before that lot.

Q. When were they put on board the steamer; your wife's trunks? A. Before this lot of trunks containing my collection.

Q. When you went down there that morning wasn't your wife's trunk on the pier with the others? A. They were.

Q. Did you see your wife's trunks put on board the steamer? A. I saw them.

Q. How is it that you remember seeing this yel- 4332
low paper on all your cases with the collection in them, and don't remember whether there was any on your wife's trunks or not? A. Because her trunks were to go with her to Paris, and those trunks were to go to Havre.

Q. Is that the reason you don't recollect? A. No, that isn't the reason I don't recollect; that is the reason that I account for not having the yellow mark on her trunks.

Q. You say it didn't have any yellow paper on it? A. I didn't say it did or did not; I don't remember.

Q. What do you mean when you say that ac- 4333
counts for her trunk not having the yellow mark on it? A. Because her trunk was baggage, while the other trunks were freight; she is entitled to a certain amount of baggage.

Q. Do you say your wife's personal baggage was marked the same as your collection, or not? A. I didn't say that; I don't know.

Q. What arrangement did you make for having this collection taken care of at Havre after it was unloaded and before you would arrive? A. There wasn't such a thing as you say.

4334 Q. How long was the steamship company to keep this collection in Havre before you called for it? A. There was no provision made as to how long a time it would be.

Q. They knew you were not going on that boat? A. I don't know if they knew it or not—certainly they knew I wasn't going with that boat.

Q. Did you tell some one that? A. Yes, I told Mr. Faguet that I wasn't going.

Q. How long did you tell him it was going to be before you followed your wife? A. I didn't state any date.

Q. The Company didn't say anything about keeping the collection in Havre until you called for it?
4335 A. Mr. Faguet didn't say anything.

Q. You didn't make any arrangement for that at all, did you? A. I was to sail probably the week after—I would sail with the next boat, and if I could settle some affairs before that week I was to go with the next steamer; and that next steamer was then the Red Star Line; if I was ready before I expected I was to sail with the Red Star Line.

Q. Did you tell this to Mr. Faguet? A. I had nothing to tell of my private affairs——

Q. Did you; yes or no? A. Nothing of that kind.

Q. Did you at any time tell Mr. Faguet? A. I said nothing at the time to Mr. Faguet; I was my
4336 own boss and I knew what I wanted; I didn't see why I should tell my affairs to Mr. Faguet.

Q. While you were collecting this collection you were in correspondence with dealers in all parts of the world, were you not? A. I was.

Q. Where is that correspondence? A. On board the *Bourgogne;* in my trunks on the *Bourgogne.*

Q. How many letters did you have? A. I didn't count them.

Q. Can you give us any idea of how many? A. No.

Q. Can you give us the names of any of the deal- 4337
ers from whom you received these letters? A. The names and addresses of all the dealers and correspondents were in a special book; in alphabethical order, and that is what you call an address book; that book is also in the *Bourgogne*.

Q. Can you give us the name of any dealer with whom you were in correspondence during the time you were making this collection? A. Yes.

Q. Well, give us it. A. I don't know why I should; this is a professional secret in one sense; why I should give you the name of the dealer I don't know.

The Commissioner: Answer the question. 4338

A. There was a fellow by the name of Gould; dealer, Gould or Gold.

Q. Well, was it Gould or Gold? A. I would pronounce it Gold.

Q. Spell it, and then we will pronounce it. A. G-o-l-d.

Q. What was his business? A. He was a dealer in curios; Indian curios specially.

Q. What do you mean by Indian curios? A. All domestic and war implements pertaining to Indians.

Q. Where was his place of business? A. In New 4339
Mexico.

Q. Whereabouts in New Mexico? A. Santa Fe.

Q. What was his first name? A. I forget his first name.

Q. How many letters did you have from him in this correspondence? A. I didn't count them.

Q. More than one? A. More than one.

Q. A dozen do you think? A. More; a hundred—I don't know.

Q. Over what period did that correspondence extend? A. Several years.

4340 Q. How soon after you begun making your collection was it that you begun to correspond with him? A. A couple of years afterwards probably.

Q. That is about ten or eleven years ago; is that right? A. About ten years ago.

Q. Was he then at Santa Fe? A. He was.

Q. Is he still there? A. I presume so.

Q. When was the last time that you had any correspondence with him, or communication with him? A. Oh, several years ago.

Q. How many years? A. Before the sinking of the *Bourgogne*.

Q. How long before the sinking of the *Bour-*
4341 *gogne?* A. A year or two years.

Q. Did this correspondence result in anything; did you buy of him or sell anything to him? A. I was buying.

Q. Were the things that you bought of him in these trunks? A. Some.

Q. What did you buy of him; what was the first lot of goods that you bought? A. Anything I could get: "Send me what you have, c. o. d."

Q. What articles that were in these packages did you buy of Mr. Gold? A. Many.

Q. Which ones? A. I don't know; I should have to see the collection before me, and then I could
4342 tell you.

Q. Can you name any single article in that collection that was put on board the *Bourgogne* that you bought of Mr. Gold? A. A quiver with bow and arrows, and the quiver was made of mountain lion's skin.

Q. Where was that delivered to you? A. That I don't remember.

Q. Did you go to his place to get it? A. I said before he would send me everything he could, c. o. d.; that is what the understanding was; "Send me what you can c. o. d."

Q. Where were you when he sent this quiver and 4343
bow and arrows to you? A. At different places.

Q. Which place were you at when you received this quiver and bow and arrows from Mr. Gold? A. I don't know.

Q. Did they come c. o. d.? A. Certainly.

Q. By express? A. By express.

Q. How much did you pay for them? A. For what?

Q. These things you have just enumerated? A. I don't count details.

Q. This quiver and bow and arrows. A. I don't remember what I paid for them.

Q. Was that an article such as had a market 4344
price among dealers in curios? A. Certainly; it was even a rare article.

Q. When did you buy that of Mr. Gold? A. During the period that I stated before; I don't know whether it was the beginning or the end; he would send me stuff sometimes every week.

Q. What else did you buy of him? A. Many other things.

Q. What? A. Shields, moccasins, leggings, war shirts, dancing belts, war bonnets, pipes, pottery, clubs.

Q. How much, in all, did your purchases from Mr. Gold amount to? A. I presume several thou- 4345
sand dollars.

Q. What do you mean by "several thousand dollar"? A. I mean more than one.

Q. Two? A. Probably.

Q. $3,000? A. I don't know.

Q. $4,000? A. I would have to have my book before me to tell you how much.

Q. How did Mr. Gold know where to send these things to you if you were travelling all the time? A. I suppose when he receives a letter from me he knows where to send them .

4346 Q. Did you see any of these things that you bought from Mr. Gold before you purchased them? A. I saw them before I paid for them.

Q. They were sent with the privilege of examination, were they? A. Exactly.

Q. Always. A. Always.

Q. Where were you during the time covered by all these transactions with Mr. Gold? A. Fourteenth street; Fourth avenue.

Q. During all the time? A. During all what time?

Q. During all the time covered by your transactions with Mr. Gold were you on Fourteenth
4347 street, New York? A. I don't know what you mean; put me a more plain question than that; I stated that I made business with him during several years.

By Mr. Benedict:

Q. During all those years were you in Fourteenth street? A. Certainly not; didn't I testify that I was in different places?

By Mr. Haldane:

Q. Where were you? A. I stated before, Four-
4348 teenth street and Twenty-third street and different other places; Fourth avenue.

Q But always in or about New York? A. Always in or about New York.

Q. You never had anything sent to you by Mr. Gold except to New York; is that right? A. As far as I remember.

Q. Have you given us all the information you can with respect to the kind and amount of your purchases from Mr. Gold of Santa Fe? A. As I stated before, I would have to have the book before me.

Q. You have given us all the information you 4349
can upon that subject, have you? A. As far as I can.

Q. Can you tell us the name of any Express Company that delivered any particular article to you from Mr. Gold? A. Wells Fargo; it is easy to find out.

Q. Did all your packages from Gold come by that one line? A. Most of them.

Q. What other dealer did you buy from? A. Some in Montana; some in Chicago.

Q. I ask you for the name of some one other dealer that you purchased from? A. There was a man in Montana; I don't remember now just what 4350
his name was.

Q. Whereabouts in Montana? A. Montana.

Q. In Montana, what town; whereabouts in Montana? A. I forget; I can't think of it just now.

Q. What was his name? A. I forget his name.

Q. Did you ever see him in Montana? A. This man?

Q. Yes. A. I saw him here.

Q. How did you become acquainted with him? A. He came to see me.

Q. Did you see him often? A. I saw him in one of his visits here East.

Q. More than once? A. I don't remember.

Q. When did you last see him? A. I don't re- 4351
member.

Q. How many years ago? A. Some years ago.

Q. Was it soon after you begun to make your collection, or was it shortly before the ship went down? A. I don't remember; when I was collecting; during the period I was collecting.

Q. And that covered a period of thirteen years, didn't it? A. That is right; twelve years.

Q. What did you buy from this man in Montana? A. Clubs, masks, pipes.

4352 Q. How many? A. I don't know.

Q. To what amount? A. I don't know.

Q. What did you pay for any single article that you bought of him? A. I don't know; I would have to see the article before me.

Q. Over what period of time did your transactions with him extend? A. Up to the time I was in Washington square; up to just before the *Bourgogne* sailed; some time before.

Q. How long before that? A. I don't know.

Q. How many times did he send you goods? A. A. Whenever he could.

Q. How many times? A. I didn't count them.

4353 Q. How many letters did you have from him? A. I don't know; it is on my books.

Q. How much money did you ever pay him? A. That is a ridiculous question, that; $200, or $300, or $80, or $50, or anything like that; probably he would send me $200 worth; I don't know, in that period. You ought to ask a sensible question.

Q. How many times did you receive shipments of goods from him? A. I don't know; it is in my books; I haven't got them here.

Q. What was the amount of any single shipment that you had from him? A. I don't know; it is recorded in my books on the *Bourgogne*.

4354 Q. Which of the articles you purchased from him were in these cases when they were shipped? A. I don't know; many.

Q. You had letters from him, had you? A. I had, yes.

Q. How many? A. I didn't count them.

Q. Well, how many? A. Do you, as a business man, count the letters that you receive?

Q. Is that the best answer you can give to that question? A. That is the best answer I can give to that question.

Q. Among these correspondents was there more

than one letter from this man in Montana? A. 4355
More than one.

Q. Did he use a printed letterhead? A. Probably he did.

Q. Don't you know whether he did or not? A. Yes, he did.

Q. Then why didn't you say so; why did you say "probably"? A. Because it is too ridiculous.

The Commissioner: Answer the questions as directly as you can.

Q. His name and address were printed on these letterheads? A. Yes.

Q. Can't you tell what his name was or what 4356
the town was? A. I said Montana.

Q. Was that on the letterhead? A. Isn't there a town by the name of Montana? That was its name.

Q. He lived in a town named Montana, did he? A. That is Montana, Nebraska; isn't it?

Q. I know there is a Montana in Iowa; was that where he lived? A. No.

Q. What State did he live in? A. Nebraska.

Q. Give us the name of another man from whom you purchased any of the goods that were in this collection? A. Stillwell, Deadwood, South Dakota.

Q. Was Deadwood in South Dakota when you 4357
bought these goods of him? A. I guess it is still there; unless they removed that town.

Q. How long ago was that? A. Years ago.

Q. How many? A. I don't know; during the period that I was collecting.

Q. Did your purchases from this man in Deadwood extend over all the period that you were collecting? A. I don't remember; during that period.

Q. Was it shortly after you begun making the collection, or just before the boat went down? A.

4358 I don't know; during that period; that is the best I can say.

Q. What was his first name? A. I don't know.

Q. Were you there at Deadwood? A. I was

Q. Was he there then? A. I don't know; I didn't see him.

Q. How did you get acquainted with him? A. By correspondence, and he came to see me when he was East.

Q. How did you first become acquainted with him or know he was a dealer in curios? He sent me a letter and a catalogue.

Q. Where were you when you received that? A.
4359 In Fourth avenue.

Q. What year was you living in Fourth avenue? A. Many years ago.

Q. What year? A. Ten years ago.

Q. In 1892? A. I guess so.

Q. And in 1892 while you were living in Fourth avenue you received a letter from some gentleman in Deadwood with a catalogue; is that right? A. That is right.

Q. All the articles that you dealt in were things that had a market value? A. Certainly.

Q. How many letters did you ever receive from him? A. I didn't count them.

4360 Q. Many? A. Many I suppose.

Q. Extending over all the time until just before you shipped this collection? A. Do you mean that I was in correspondence with him?

Q. Yes. A. I was during that time in correspondence with him.

Q. During all those years from 1892 to 1898? A. During that period; I don't state any time; I don't say whether it was one year or two years, or four years before.

Q. Did your correspondence with him extend

over the whole period from 1892 to 1898? A. Dur- 4361
ing that period.

Q. Did you have many dealings with him? A. I don't remember.

Q. How many times did you buy goods of him? A. I don't know.

Q. More than once? A. Certainly.

Q. More than twice? A. Yes.

Q. More than three times? A. I don't know.

Q. But you are sure you bought goods of him three times? A. I said more than once.

Q. Did you say more than twice? A. I said twice; I didn't say three; you said three.

Q. Did you say more than twice? A. I said twice; 4362
more, probably.

Q. Which of the articles that were in this collection at the time it was shipped by you were purchased of Mr. Stillwell, of Deadwood? A. I don't know.

Q. What were the articles that you bought of him? A. Domestic and war implements of Indians.

Q. Were any of those purchases in this collection when you shipped it? A. Probably.

Q. Don't you know? A. I don't know.

Q. Have you had any correspondence with Mr. Stillwell since 1898? A. I don't know; since the sinking of *La Bourgogne?*

4363

Q. Yes? A. No

Q. Have you had any correspondence with the man at Santa Fe since the *Bourgogne* went down? A. With no dealer since.

Q. What other dealer did you purchase any goods from to make up your collection? A. Some in Pine Ridge.

Q. Where is that? A. South Dakota.

Q. Is that on a railroad? A. The station is on the railroad?

4364 Q. Is it a town on a railroad? A. The railroad goes there.

Q. I wish you would answer the question? A. The railroad goes there.

Q. Is there a station named Pine Ridge on the railroad? A. Yes.

Q. What railroad is it on? A. I don't remember the name of the railroad.

Q. You have been there? A. Yes.

Q. How did you get there? A. From Chicago.

Q. How did you get there? A. I took a ticket in Chicago for Pine Ridge.

Q. How did you get there? A. With the rail-
4365 road; with the train.

Q. What railroad? A. I don't remember.

Q. Which way did you go to get to Pine Ridge? A. With the train; north, in South Dakota.

Q. You started from Chicago? A. Yes, I started from Chicago.

Q. Where did you cross the Missouri River? A. I don't remember.

Q. Did you cross the Missouri River at Council Bluffs? A. I don't remember.

Q. Have you ever been to Council Bluffs? A. I don't know.

Q. Did you cross the Missouri River at Sioux
4366 City? A. I don't remember.

Q. Where did you stay in Pine Ridge? A. In the agency.

Q. How far was the agency from the railway station? A. I don't remember.

Q. How did you get from the railway to the agency? A. With a horse.

Q. Horseback? A. Yes.

Q. Who went with you? A. A man by the name of Phillips; Captain Phillips.

Q. What year was this? A. Nine or ten years ago.

Q. Which? A. Ten years ago. 4367

Q. In 1892? A. In 1892.

Q. You were traveling then, were you? A. Yes.

Q. Where did you find this dealer? A. I found him here in New York.

Q. Didn't you see him at Pine Ridge? A. Yes, I was with him; he was meeting me in the railroad; I saw him.

Q. Did he meet you at the train? A. He came and got me in the railroad in Chicago.

Q. Did he go with you? A. We went together, yes.

Q. He didn't have any goods with him in Chicago? A. I bought some goods from him here 4368 in New York.

Q. Some that were in the collection? A. Yes; in one of those trunks that was lost there was some; I bought it full of goods from him.

Q. In New York? A. In New York.

Q. In 1892, before you went out to Pine Ridge? A. Yes.

Q. What was his name? A. Phillips.

Q. What was his first name? A. I don't remember; he was called Captain Phillips.

Q. What goods did you buy of him in New York? A. Bow and arrows, quivers, masks, war shirts, war bonnets; tobacco pouch and pipes.

Q. Did he deliver them to you here in New York? 4369 A. Yes.

Q. Were those goods in this collection when you shipped them? A. I presume some were.

Q. Which ones? A. I don't know.

Q. What articles that you bought of Captain Phillips in New York were in this colection? A. I don't remember.

Q. Will you swear that any of them were? A. Certainly some were.

Q. Which ones? A. I don't remember; if you

4370 produce me the goods before me I will show you the goods I bought from him.

Q. You say that you can't identify a single article that you bought from him in New York in 1892 as having been in this collection; is that right? A. I don't remember.

Q. Did you go back with him to Pine Ridge immediately after making that purchase in New York? A. Oh, no.

Q. How long afterwards? A. Some months after.

Q. But in the same year? A. I believe so.

Q. Where did you meet him? A. In Chicago.

4371 Q. You went from there to Pine Ridge with him, did you? A. Yes.

Q. How came you to meet him in Chicago? A. I met him accidentally.

Q. What were you doing there at that time? A. I was going to buy some goods.

Q. Where? A. In the City of Chicago; there was a man——

Q. How came you to go with him to Pine Ridge? A. He induced me to go there to buy some goods over there; he had some more goods over there, if I wanted to buy some.

Q. When you got to Pine Ridge with this Cap-
4372 tain Phillips where did you find his collection; what sort of a place did he have it in? A. His house.

Q. Was he connected with the army post there? A. I don't know; he was called Captain Phillips; that is all I know.

Q. You didn't find out what his occupation was? A. He was trading.

Q. Was he connected with the trading post? A. He was selling coffee and sugar, and something like that.

Q. He had a store? A. A sort of a grocery store or general store.

Q. Where was his collection? A. In his house; 4373
he was a dealer; he was selling articles; there is a difference between a lot of stuff or a collection; it is two things.

Q. When you got to his house did you find that he had any goods on hand, such as you were purchasing? A. Certainly; plenty.

Q. Did you make a purchase of him then? A. Yes.

Q. What did you buy of him? A. Several hundred dollars' worth.

Q. What? I don't ask you how much? A. War bonnets; any article of Indian curios that I wanted.

Q. Describe what you bought of him? A. Tobacco 4374
pouches, moccasins, leggings.

Q. How many pairs of moccasins did you buy? A. I don't remember.

Q. How many tobacco pouches did you buy? A. I don't remember.

Q. How many war bonnets did you buy? A. I don't know.

Q. Do you remember what any article that you bought looked like? A. No; I described it before; I said leggings.

Q. Describe leggings? A. Leggings are made of buckskin with fringe and bead-work on the side and some with porcupine work. 4375

Q. How much did you pay for any pair of leggings that you bought of him? A. $15; $25.

Q. How many did you buy at $15 a pair? A. I don't remember.

Q. How many at $25 a pair? A. I don't remember.

Q. Did you buy any war bonnets of him on that occasion? A. Yes.

Q. What is the war bonnet? A. It is made of eagle feathers.

4376 Q. How many of those did you buy of him on that occasion? A. I don't remember.

Q. How much did you pay for any one of them? A. I don't remember.

Q. How many tobacco pouches did you buy of him on that occasion? A. I don't know.

Q. You remember you bought some? A. I know I bought some, yes.

Q. Were they all alike? A. No.

Q. All the same price? A. No.

Q. Can you describe any one of them; do you remember how any one of them was made now? A. Yes, sir; it is made of buckskin; probably some
4377 two feet, or two and a half feet long; the half part is embroidered with porcupines and some embroidered with beads and porcupines; generally part of the fringes are also embroidered with porcupine quills and the balance is long fringes of buckskin.

Q. Were any of those tobacco pouches in the collection when you packed it? A. Probably.

Q. Don't you know whether they were or not? A. I don't know whether they were those, or others; there were some.

Q. How much money did you pay Mr. Phillips for what you bought at that time? A. Several hundred dollars.

4378 Q. How many hundred dollars? A. Five or six hundred dollars.

Q. Don't you remember whether it was five or six? A. No.

Q. Will you swear it was over three? A. Yes.

Q. It might have been as much as seven hundred? A. I don't remember; it was over five.

Q. How long did you stay there at Pine Ridge with Captain Phillips? A. About a week.

Q. Where did you board? A. With him.

Q. Was he the only person you bought any curios from? A. No; I bought some from some Indians.

Q. At Pine Ridge? A. Yes. 4379

Q. What was the name of any Indian you bought anything from? A. Chompasaka; I don't know how to spell it; I only know how to pronounce it.

Q. What did you buy of him? A. Different articles.

Q. What? A. Dancing belts; moccasins, tobacco pouches.

Q. Were any of those articles in this collection when you shipped it? A. Yes.

Q. Which of them? A. Some tobacco pouches; war shirts, dancing belts.

Q. What is a war shirt? A. A war shirt is a shirt made of buckskin embroidered with porcu- 4380 pine, or with beads.

Q. How many of those did you buy of this Indian at Pine Ridge? A. Only one that time.

Q. How much did you pay for it? A. $100.

Q. In what? A. In silver.

Q. Did you have a hundred dollars of silver with you? A. Yes.

Q. How much silver did you have with you on that trip? A. How much money?

Q. How much silver? A. I don't know, but I exchanged all the money I could into silver; Indians want silver.

Q. How did you pay Captain Phillips? A. In 4381 bills.

Q. How much money did you have with you? A. A couple of thousand dollars.

Q. Where did you get it? A. From making speculations in curios.

Mr. Benedict: I object to all this.

The Commissioner: It is allowed.

Q. That is, you mean buying and selling them again? A. That is right, yes.

Q. Who else did you buy any goods of at Pine Ridge on that occasion? A. From other Indians.

4382 Q. Do you remember the name of any other Indians? A. Yes.

Q. What? A. Wombalister.

Q. What did you buy of him? A. The same story again; any thing I could get; moccasins, war bonnets, or war clubs.

Q. You remember this Indian, don't you? A. Yes, I know him.

Q. You remember talking with him, don't you? A. Yes.

Q. You remember buying things of him? A. Yes.

Q. What did you buy? A. Moccasins.

Q. How many? A. I don't remember; tobacco

4383 pouches.

Q. How many? A. I don't know.

Q. What else? A. Clubs; I don't know how many.

Q. Have you enumerated everything that you can remember that you bought of him? A. Everything I could get.

Q. Do you remember whether you bought any leggings? A. I don't remember.

Q. But you remember buying the tobacco pouches? A. Yes.

Q. How much did you pay for them? A. $10.

Q. For how many? A. For one.

Q. How many were there? A. I don't remember.

4384 Q. Did you pay $10 for each of them? A. Sometimes I paid $25.

Q. From this man on this trip I mean? A. I don't remember.

Q. Do you remember paying him $10 for one? A. Yes.

Q. What fastens that on your memory? A. What?

Q. What makes you remember paying him $10 for one tobacco pouch? A. I remember that he came with the tobacco pouch in his hand and I

asked him how much he wanted, and he told me $10. 4385

Q. And you gave it to him? A. I gave it to him, of course.

Q. You didn't try to get it any cheaper? A. Certainly not.

Q. Was that all he had at that time to sell? A. I don't remember.

Q. Did he have any other goods about him? A. I don't remember; a pair of moccasins I said before.

Q. Where did he get these moccasins and tobacco pouches from? A. I don't know who he got them from.

Q. Where were you when you bought them from him? A. Next to him. 4386

Q. Were you at the agency? A. No.

Q. Were you down at the village on the railroad? A. I was in the Reservation where they were camping.

Q. Were you in his tent when you bought them? A. No.

Q. Whereabouts were you? A. I was outside.

Q. Outside of his tent? A. No; I was outside.

Q. Outside what? A. Outside the camping place.

Q. This Indian had all these things about his person, or in his pocket, or how? A. He had the tobacco pouches in his hand, I stated.

Q. I am asking about the other things; where did he keep them? A. I don't know; under his blanket. 4387

Q. Where did he take you to show them? A. Several of them came to see me.

Q. Where? A. At this place where I stayed.

Q. At Captain Phillips's place? A. No, it was outside of Captain Phillips'; I went to see the Indians.

Q. Were you standing outdoors, or in a house? A. I was outdoors.

Q. And they came to you and stopped you? A. No, they didn't stop me.

4388 Q. How did you know they had anything to sell? A. I asked them.

Q. What did this Indian Wombalister say? A. He showed me that, under his blanket; he had a pouch.

Q. What language did you converse with these Indians in? A. Sioux.

Q. There are different dialects of Sioux? A. Yes.

Q. What dialect did they use? A. Dakota Sioux.

Q. Did you buy all these things of this Wombalister at one time, or at different times? A. I bought what I stated before, at that time.

4389 Q. Did you make more than one purchase of him? A. Since that? Many times I bought other articles of him since that.

Q. How long did you stay at Pine Ridge? A. About a week.

Q. Have you been there more than once? A. No.

Q. When did you buy pouches of him so many times? A. He sent them to me, or when he came here with Cody, with Buffalo Bill.

Q. When was that? A. The following year; every year Buffalo Bill has been here in Madison Square Garden.

Q. And you bought of this same Indian? A. He and fifty others every year when he was here; the
4390 year he was here I bought about $3,000 worth from Buffalo Bill.

Q. What year was that? A. The last time he was here before the sinking of *La Bourgogne*.

Q. In 1897? A. In the spring, yes; no, no, no, excuse me; when the *Bourgogne* sunk was in 1898.

Q. What year did you buy so many goods of Buffalo Bill's Indians? A. That very year in the spring.

Q. Where? A. In Washington Square; the Indians used to come and see me, twelve or fifteen at a time.

Q. Where was Buffalo Bill exhibiting at that 4391
time? A. He was giving a show in the Madison Square Garden, and in Brooklyn and in Jersey; in the spring.

Q. On this Pine Ridge trip did you buy goods of any other Indians? A. Yes.

Q. What was the third Indian's name? A. Atomkanompa.

Q. What did you buy of this third Indian? A. About the same things; similar; all that I could get in Indian curios.

Q. Can you mention any article that you bought of him? A. No.

Q. Can you mention the number of any articles 4392
that you bought of him? A. I can't.

Q. Could you give the price of anything that you bought of him? A. No, not unless I see the articles before me.

Q. How much did you pay him altogether? A. I don't remember.

Q. Were any of these goods that you bought of this third Indian in this collection that you shipped? A. Probably.

Q. Do you know whether they were or not? A. I don't remember.

Q. Have you mentioned all the purchases you made at Pine Ridge when you went up there in 4393
1892? A. Yes, I bought some articles from other different Indians.

Q. How much did you pay out at Pine Ridge on that occasion for curios? A. I don't remember.

Q. Can't you give us any idea? A. Several hundred dollars; I guess I spent about $1,500 in that trip all told.

Q. At Pine Ridge? A. I say on that trip, from the time I left New York until I came back to New York.

Q. Where else did you go besides to Pine Ridge?

4394 A. I don't know; in Chicago; I bought some in Philadelphia, too; I came back to Philadelphia.

Q. What other dealer besides Captain Phillips and these others that you have mentioned did you have any correspondence with? A. There was some Indians in Pine Ridge were in the habit of sending all the goods which they could gather, to me; they would bring them especially when they were coming here with Buffalo Bill.

Q. That isn't what I asked you; what other dealer besides these dealers you have mentioned did you have any correspondence with? A. I don't remember; I have lost my book; I don't remember all the

4395 dealers.

Q. Have you given us the name of every dealer that you can recollect now? A. No; that I could remember just now, yes; there was some in San Francisco; there was another one in Albuquerque.

Q. What was the name of the one in San Francisco? A. I don't remember; there were several there.

Q. Where was his place of business? A. I don't remember.

Q. Were you ever there? A. No.

Q. How many letters did you receive from him? A. I don't remember.

4396 Q. Did you buy any goods of him? A. Yes.

Q. How many times? A. I don't know.

Q. To what amount? A. I don't know.

Q. What about the man Albuquerque; were you ever there in his place? A. I was in Albuquerque.

Q. At his place of business? A. I don't remember whether I was in his place.

Q. What was his name? A. I don't remember.

Q. How many letters did you have from him? A. I don't know.

Q. Did you buy any goods of him? A. Yes.

Q. How many times? A. I don't know.

Q. To what amount? A. I don't know. 4397

Q. Were any of the goods that you bought from the man in San Francisco or in Albuquerque in this collection when you shipped it? A. Probably there was.

Q. Do you know? A. I don't remember.

Q. Can you give us the names of any other dealer with whom you were in correspondence and from whom you purchased any goods for your collection? A. I don't remember.

Q. If this examination should be adjourned, will you refresh your memory between now and next examination to see whether you can remember any other dealer? A. You needn't adjourn it for that 4398 purpose.

Q. We don't need your advice; answer the question. If this examination should be adjourned, will you refresh your memory between now and the next examination to see whether you can remember any other dealer? A. I will try.

Q. You were in New Mexico a considerable time, weren't you? A. I don't know what you call a considerable time.

Q. How long were you in New Mexico in the last ten years? A. About a year.

Q. You have been in New Mexico more than once? A. Yes.

Q. When did you go the last time? A. Some 4399 years before.

Q. What year were you in New Mexico the first time? A. I don't remember.

Q. How long after you came to this country did you go to New Mexico? A. Some years after.

Q. Can't you give us any idea of the first time when you went to New Mexico? A. No, sir.

Q. You have been here fourteen years, haven't you? A. I presume about that.

4400 Q. That was in 1888 you came here; when did you go to New——

Mr. Benedict: I submit that when a question has been put three times and the witness has answered it, it ought not to be repeated.

The Commissioner: I think the witness ought to make a more direct answer, after suggestion of counsel.

Q. Was it before you went to Prae Ridge? A. I am not sure; I don't know whether it was before, or after.

Q. How many times have you been to New
4401 Mexico; how many separate trips have you made to that part of the country? A. Twice.

Q. When was the last trip made; what year? A. When I came back from Europe.

Q. I asked you what year? A. I think in 1896; 1895 or 1896.

Q. Were you long in New Mexico on that trip? A. I stayed about a year.

Q. Where did you stay? A. In Santa Fe.

Q. You made Santa Fe your headquarters? A. Yes.

Q. What was your business in New Mexico on that occasion? A. No business; I have told you
4402 before, I was a dealer and collector.

Q. Was that all the business you had in New Mexico? A. Corresponding with collectors.

Q. You were in New Mexico a year and all the time were adding to your collection; is that right? A. Whenever I had a chance to find something that I didn't have.

Q. During all that time did you get acquainted with a single dealer in curios? A. Certainly.

Q. Who; what was his name? A. This man Gold; I mentioned before.

Q. Who else? A. I don't remember; some other 4403
dealers; I forget.

Q. Where did they live? A. In Santa Fe, I guess; in that neighborhood.

Q. You say that you consider that their names and business are a professional secret? A. Some; yes.

Q. Why? A. For many reasons.

Q. What reasons? A. In the first place there are many people who can send articles that don't want to be known that they have sold those articles.

Q. Is that the reason that you can't remember the names of these people? A. Oh, no; I don't remember them. 4404

Q. You just remember one man; Gold; is that right, that you only remember him? A. Yes; because I know him more than the other ones; I know him more.

Q. Did you meet any of these other dealers frequently? A. I don't remember; sometimes.

Q. Do you remember associating or being around in the company of any of these dealers during the year that you were at Santa Fe? A. I met them several times, but I didn't associate with them.

Q. Were they persons who kept stores in which they kept these curios? A. I don't know whether you would call them stores. They had some of those 4405
articles in every place.

Q. Had they anything on exhibition for sale to the public? A. They were for sale.

Q. Can you remember the street or number of any place of that kind where you saw any of these collections? A. Yes, I remember; but I don't remember the name of the street.

Q. Do you know the name of the man that had it? A. No.

Q. Did you buy any of these goods from any other dealer except Gold in Santa Fe? A. Yes.

4406 Q. What did you buy? A. If I saw something that would interest me I would buy it.

Q. Describe any article in your collection? A. Anything in the line of Indian curios.

Q. Describe any article in your collection that you bought of any dealer in Santa Fe other than Gold? A. I don't remember.

Q. When you went to New Mexico on this second trip did you take some money with you for the purpose of purchasing this kind of goods? A. I had some money with me.

Q. How much? A. I don't remember.

Q. Do you remember how much you had when
4407 you went to Pine Ridge? A. Yes.

Q. That was in 1892? A. Yes.

Q. And when you went to New Mexico it was 1896? A. Yes.

Q. Why don't you remember how much you took to New Mexico with you? A. Because I don't.

Q. How much money did you lay out in additions to your collection while you were in New Mexico? A. I don't know.

Q. Did you sell any goods while you were in New Mexico? A. I sent some east.

Q. Did you sell any? A. Yes, I sent some east.

Q. What was the amount of your sales of goods
4408 sent east while you were in New Mexico? A. I don't know.

Q. When you left New Mexico did you bring any curios away with you, or had you sent them all east to be sold; when you left there had you any stock of those goods on hand or had you sent them all east? A. I had several trunks of stuff with me.

Q. Who was with you on this second trip to New Mexico? A. My wife and child.

Q. They stayed at Santa Fe all the time? A. Yes.

Q. Where? A. In a house.

Q. Whose house? A. I don't remember. 4409

Q. Did you board? A. Yes, sir, I boarded.

Q. Do you remember the name of your landlord? A. I forget the name.

Q. What street was it on? A. I don't know—San Francisco street.

Q. You are sure of that? A. I believe it was. I don't know the street; there is no name on the street like here.

Q. You used to get letters while you were there? A. Yes.

Q. And they had to be addressed to some street? A. No, sir.

Q. You had no post office address there? A. 4410
Everybody goes and gets his letters.

Q. Was the wife that you had with you the wife that was lost on the *Bourgogne?* A. No.

Q. How many years was it before this second trip that you had been to New Mexico before? A. Some years before.

Q. How many years? A. I don't know.

Q. Where did you stay on your first trip? A. At a hotel.

Q. What town? A. Santa Fe.

Q. How long did you stay on that first trip? A. I don't remember. In Santa Fe?

Q. Yes? A. A week or a couple of weeks. 4411

Q. Then where did you go? A. I came back to Chicago.

Q. Was any one with you on the first trip? A. No, I was alone.

Q. What did you go there for the first time? A. Pleasure; to see if I could buy something.

Q. Did you buy something on the first trip? A. I guess I did.

Q. Do you know whether you did or not? A. I don't remember.

Q. Did you buy any goods in New Mexico from

4412 anybody but dealers? A. I don't remember. I stated before that I would buy goods from anybody.

Q. I am asking whether, as matter of fact, you did buy any goods in New Mexico on either of these trips from any person beside dealers? A. Yes, some others too.

Q. Who? A. I don't know; I said before I didn't know the name of that man. That is, I knew his name at the time, but I don't remember now.

Q. People who lived in Santa Fe? A. Yes.

Q. You didn't buy any goods from the Indians in New Mexico? A. Yes, I did.

Q. Why didn't you say so when you were asked
4413 before? A. Because you didn't ask me.

Q. I asked if you bought any goods from anybody but dealers?

Mr. Benedict: He said so; he said he did.

Q. Did you hear me ask you if you bought any goods from anybody but dealers? A. Yes; you didn't mention Indians.

Q. You said no, didn't you?

Mr. Benedict: No, he didn't; he said yes.

A. I said no; I said I bought besides of dealers.

Q. But from persons who live in Santa Fe and
4414 from persons you didn't know? A. From any one who would sell me anything.

Q. You didn't think of any purchase from Indians until I spoke of them? A. You didn't speak of Indians.

Q. Was that the reason you didn't mention Indians, because I didn't? A. Probably.

Q. What kind of Indians did you meet in New Mexico? A. Pueblo Indians.

Q. Is that a tribe? A. That is several tribes.

Q. Didn't you say on your direct that you bought goods of the Sioux Indians in New Mexico? A. I

never said nothing of that kind. There is no Sioux 4415
Indians in New Mexico.

Q. That is what I thought. Do you mean to say that you didn't swear to that on your direct-examination? A. I said some Indians; I didn't say Sioux Indians.

Q. (Repeated.) Do you mean to say that you didn't swear to that on your direct-examination? A. New Mexico? No.

Q. Did you have any correspondence with Indians in New Mexico? A. No.

Q. Then where were the Indians that you had correspondence with that you mentioned on your direct? A. In South Dakota. 4416

Q. Indians wrote you letters? A. I didn't say they wrote me letters.

Q. Didn't you testify on your direct that you had correspondence with many of the Indians? A. Yes.

Q. Then who wrote the letters to you? A. I didn't say that.

Q. What did you mean? A. I was corresponding with them.

Q. What do you mean by that? A. They would let me know that they would come in such a time to New York.

Q. Do you understand what corresponding with them means? A. I do; yes. 4417

Q. What do you understand by that? A. You mean they were writing? Not themselves. Some may know English. Many white people don't write English and have other people write for them.

Q. What did you buy from the Pueblo Indians in New Mexico when you went there in 1896? Any part of the goods that were in these trunks when they were shipped? A. I bought some arrow points.

Q. How many? A. I don't remember.

Q. What else? A. Some moccasins.

Q. How many moccasins? A. I don't know.

4418 Q. What else? A. I don't remember.

Q. How much money did you pay the Indians for what you bought of them in New Mexico in 1896? A. I don't remember.

Q. One hundred dollars? A. I don't know.

Q. A thousand dollars? A. I don't know.

Q. It might be either a hundred or a thousand, might it? A. I don't know.

Q. When you left New Mexico at the end of your trip in 1896 where did you go next? A. To New York.

Q. You brought your wife and child back with you? A. No.

4419 Q. Where did you leave them? A. I left my wife there and brought my child back here.

Q. Where did you take your child when you got back to New York? A. I buried my wife in Mexico.

Q. Where did you and your child go to when you got back to New York? A. We went to the hotel.

Q. What hotel? A. I don't remember.

Q. What street was it on? A. I don't know.

Q. How long did you remain at the hotel? A. Over night.

Q. Then where did you go?

Mr. Benedict: Is there any limit to an examination of this kind?

4420 The Commissioner: This is a case in which there is a very, very large latitude to be allowed.

Mr. Benedict: I think so, too, but this seems to me to be an abuse of the process of the Court.

Mr. Haldane: I care nothing about the claimant's wherabouts except for the purpose of tracing this collection all the time.

Q. How long was it after you got back to New York before you began to engage in this business again of buying and selling curios? A. Immediately after; a month or six weeks after.

Q. That was in 1897, was it? A. I guess so. 4421

Q. Please don't guess. Was it in 1897? A. I don't keep track of those dates. If you want me to take a pencil I will try.

Q. What time of the year did you come back from Santa Fe to New York? A. That was in the fall.

Q. Did you bring your packing cases with you? A. Yes.

Q. Where were they sent to? A. New York.

Q. Whereabouts in New York? A. In the depot.

Q. Where were they taken from the depot? A. To my room.

Q. Where was that? A. In 23d Street.

Q. What number? A. I stated before; it is in my 4422 testimony. Between 6th and 7th Avenues. I don't remember the number.

Q. You had a furnished room there? A. No.

Q. Did you furnish it yourself? A. Yes.

Q. How many rooms did you have there? A. Several.

Q. When did you unpack your cases; how long after you took up your residence on Twenty-third street? A. Immediately when I sent the trunks there.

Q. Did you have it on exhibition there? A. I had it on the wall.

Q. For the public to see? A. I don't know what 4423 you mean by exhibition. I put it in the room.

Q. Did you receive visitors there to look at it? A. Many.

Q. Purchasers? A. Yes.

Q. Who came there; anybody that you remember now? A. Yes.

Q. Any collectors? A. Yes, sir.

Q. Who? A. Dr. Ferdinand.

Q. What was his business? A. He is a doctor; medicine.

Q. Where did he live? A. He was at the time at

4424 One Hundred and Twenty-seventh street, I believe.

Q. What was his first name; do you know? A. I don't know.

Q. He is a doctor of medicine? A. Yes.

Q. Was your collection all unpacked and spread out for exhibition when he came to see it? A. I don't know; some were in the trunks and whatever I could I put on the wall.

Q. How many did you unpack when you got back to New York from New Mexico? A. Four or five.

Q. How many did you leave packed? A. I don't know.

Q. You remember leaving some without unpack-
4425 ing them, don't you? A. If you have the least idea of putting up a collection you would understand that if the space is limited, if you have twenty tobacco pouches, you will select the ten best specimens and leave the others.

Q. How many of the trunks did you leave packed when you put up your collection in Twenty-third street for exhibition? A. I don't know.

Q. Who else came there to inspect your collection while it was in Twenty-third street? A. I must give some explanation. It wasn't put on exhibition in the sense which is represented. One part was a collection which was not for sale under any
4426 circumstances. If I didn't have a penny I wouldn't part with those things. The other part was for sale. Suppose I only want to take a dozen articles out of the trunks; it doesn't follow that I would have the whole trunk empty.

Q. Did you unpack the articles that you wanted to sell or the articles that were not for sale? A. Both.

Q. Didn't you just say that the articles that were not for sale at any price you wouldn't unpack? A. I didn't unpack; I said I wouldn't sell them.

Q. Then some of the things were for sale and 4427
some were not? A. That is right.

Q. And some of the things you left in the trunks were for sale and some of the things you left in the trunks were not for sale? A. Probably; I would rather leave in the trunks the things that I didn't want to sell than the things that I wanted to sell.

Q. About what proportion did you have unpacked and visible to persons coming to Twenty-third street? A. There is no man on earth would be able to tell you that.

Q. Did you have one-quarter? A. I don't know.

Q. Did you have three-quarters? A. I don't know. 4428

Q. How many trunks did you have? A. I don't know; four or five.

Q. Was that the first time that you ever had unpacked or spread out your collection for people to see in New York? A. Oh, no.

Q. Where did you have it on exhibition or where people could see it before? A. At the place I testified to before.

Q. Where was that? A. I testified to that effect last time. On Fourth avenue and Fourteenth street.

Q. Wherever you were you always unpacked it so people could see it? A. Always. 4429

Q. Did you have any sign up? A. Sometimes.

Q. Did you have any sign up on Twenty-third street? A. No.

Q. Did you advertise it? A. No.

Q. How long did you keep your collection at Twenty-third street? A. I don't know how long I kept it there. The fall and winter and spring.

Q. Of what year? A. 1897, I believe, I don't know.

Q. You brought it there in the fall of 1897, did you? A. When I came back from New Mexico.

4430 Q. And you kept it there about a year, did you? A. About that; not quite.

Q. Who else came to see this collection during the year you had it on Twenty-third street? A. Mrs. Brown.

Q. Who is she? A. She is a millionaire.

Q. You can't identify her that way. Where does she live? A. Thirty-sixth street, I believe.

Q. What is her first name; do you know? A. I don't remember her first name.

Q. Was she a collector? A. She was.

Q. Did she make any purchase of you while you were in Twenty-third street? A. I guess she did.

4431 Q. Do you know whether she did or not? A. She did.

Q. To what amount? A. I don't know.

Q. A hundred dollars? A. I don't know; I would have to consult my books.

Q. A thousand dollars? A. I don't know.

Q. Did Dr. Ferdinand buy any things out of this collection? A. Yes.

Q. How much? A. I don't remember.

Q. A thousand dollars? A. I don't know.

Q. Might it have been a thousand dollars? A. All together at one time?

Q. All together? A. Oh, yes.

4432 Q. And it might have been more than that that Mrs. Brown purchased? A. No.

Q. She didn't buy as much as Dr. Ferdinand? A. No, because she was not a collector like Dr. Ferdinand.

Q. Who else came and made any purchases while your collection was at Twenty-third street? A. Do you mean to say I didn't say a thousand dollars on Twenty-third street? It doesn't mean in Twenty-third street. You said how much had Dr. Ferdinand bought of me.

Q. Who else bought any goods of you while you were at Twenty-third street? A. Mr. Bascom.

Q. What is his business? A. I don't know. 4433

Q. Where did he live? A. In Lexington avenue.

Q. Was he a collector and dealer in these goods? A. Yes; he is a collector.

Q. A dealer? A. A collector.

Q. Was he a dealer? A. I don't know; he is a collector, I said.

Q. What was the amount of his purchases? A. I don't remember.

Q. Was he a large purchaser? A. Do you suppose I can remember—

Q. How was it with Mr. Bascom; did he buy things of you frequently? A. He did whenever I had something that would suit him. 4434

Q. Have you any idea of the amount of your sales to Mr. Bascom? A. I have no idea.

Q. Do you remember anything that he bought? A. No—masks and some arrows, some clubs, some moccasins.

Q. Who else bought things out of your collection while you were in Twenty-third street? A. Dr. Fulda.

Q. Was he a doctor of medicine? A. A medical doctor; yes.

Q. Where was his place of business? A. In Brooklyn.

Q. Whereabouts in Brooklyn? A. I don't remember; yes, Kent street. 4435

Q. Did he come to your place of business frequently? A. He did.

Q. Was he a pretty liberal purchaser? A. He was.

Q. Have you any idea of the amount of your sales to him? A. I have not.

Q. Couldn't you tell whether they aggregated a hundred dollars or a thousand dollars? A. I can't unless I have the books before me. It is impossible.

Q. Couldn't you tell whether he purchased a

4436 hundred dollars or a thousand dollars' worth? A. No, sir.

Q. Who else bought goods of you? A. Many other people.

Q. Can you remember any other purchasers? A. I don't remember any other; many others.

Q. From 1897, when you came back from New Mexico, to 1898, when the collection was put on board the *Bourgogne*, did you continue in this neighborhood, selling articles from your collection? A. Buying; from my collection I never sold an article. I want you to understand that; I never sold an article that was from my collection; not an
4437 article had been sold from my collection. I could prove that I didn't want to sell them. You mustn't misrepresent what I said.

Q. From the time that you came back from New Mexico until the *Bourgogne* went down, were you still engaged in selling articles from your collection? A. No.

Q. When did you stop selling? A. I never sold any.

Q. I thought you said you sold to Mrs. Brown and Mr. Bascom? A. Nothing of that kind I ever said.

Q. Your business was buying and selling curios, wasn't it? A. Yes.

4438 Q. It was your business to sell them as much as to buy them? A. Yes.

Q. You were a speculator in curios, weren't you? A. I was.

Q. What do you mean when you say you didn't sell any of your collection? A. Just what I said; just what it means.

Q. Have you given us the name of any professional collector or dealer in curios that saw your collection when you had it in New York? A. Yes, sir; George Bird Grinnell.

Q. What was his business, collecting and buying 4439
and selling curios? A. What was your question?

Q. You ought to know. A. He is the editor of the *Forest and Stream*.

Q. Can you give us the name of any dealer in this class of goods that saw your collection while you had it in New York City a man like yourself, that buys and sells curios? A. I don't know if I ever showed my collection to a dealer.

Q. You don't know that any of these people was a dealer? A. I said I don't know if any dealer had ever seen my collection.

Q. Do you know a man named Captain Riggs? A. I do. 4440

Q. What was his business? A. Buying and selling curios.

Q. Had he ever seen your collection? A. I don't know; I don't believe he had ever seen my collection.

Q. Where did you get acquainted with him? A. I first saw him somewhere in the west; in Mexico.

Q. Did you ever see him in New York? A. Oh, yes; I was there to collect a bill against him; I was to remit him a letter from a party in New Mexico; he had sold some blankets to him and wanted me to ascertain who that so-called Captain Riggs was. Riggs is not his name; I know that; 4441
and he is no authority in that line whatever.

Q. How do you know? A. Because he has made mistakes that a child wouldn't be allowed to make.

Q. You don't like Captain Riggs, do you? A. I don't like him and I don't dislike him; I don't care to—

Q. Don't you know that he has seen your collection? A. I don't know that he has seen it; in fact, I could state positively that he has never seen my collection.

Q. You say positively that he never did? A. No,

4442 because I never showed it to him; I might as well show my collection to—

Q. Do you know a Mr. Yoste? A. I do; I know him very well; he is a Jew.

Q. Did he ever see your collection? A. Not of my knowledge.

Q. Where did you know him? A. I have met him some years ago.

Q. Was he never in your house? A. He was.

Q. When your collection had been shown? A. I had some stuff on the wall for sale.

Q. Do you know a man named Tonnele? A. I do; yes.

4443 Q. What is his business? A. He is a photographer.

Q. Did he ever see your collection? A. I don't know; no, he has never seen my collection.

Q. Did he see what you had on exhibition? A. What was on the wall was for sale; most of them.

Q. You made up your whole list of articles in this collection from thinking of them on the wall, didn't you? Didn't you testify to that on your direct-examination? A. It was what—it was what I had for sale; that wasn't my collection; my collection wasn't for sale; I had other articles for sale; if you have made some mistake of calling some articles for

4444 sale that wasn't for sale, then it was your fault; not mine.

Q. Were these things that you had on exhibition for sale or not for sale? A. What was on exhibition, not pertaining to my collection, was for sale.

Q. Do you remember being asked about the things on your list, when you were being examined by Mr. Benedict, and you had to stop to think, because you had to see them on the wall, and then you could tell what they were? A. Yes.

Q. You had most of your collection on the wall; that was the only way you had of refreshing your

memory on your direct examination, was it not? 4445
A. I said before I had some of my collection on the wall; but I had also some of my collection in another room where nobody was admitted.

Q. You knew Mr. Keppler? A. I do; I have sold him many things.

Q. When you were in Twenty-third street? A. When I was in Twenty-third street, and in Washington Square, and always, for years.

Q. You forgot him when I asked you about any other purchaser? A. Probably I forgot him.

Q. Was he a pretty liberal purchaser, too? A. He was a pretty good buyer; "liberal," I don't think is the word. 4446

Q. Was he a dealer, or what? A. He was a collector, but also he would sell some articles.

Q. Do you know Joseph Imhoff? A. I do; I have sold him many things also.

Q. During the time that you were in Twenty-third street? A. No; I sold him something in Fourth avenue, I remember; and I didn't want to sell him anything more afterwards; he came once to purchase, and I refused, because he said he had some porcupine work, and that work was yellow, red and green, and he said he had seen some alive that color, and it provoked me so much I didn't want to sell him anything. 4447

Q. You only made one sale to him? A. Oh, yes; for some time I didn't want to sell him anything, and afterwards I sold him many things.

Q. Didn't you testify on your direct that it was part of your business to collect these things for museums? A. I said that I was in correspondence with collectors and museums.

Q. Didn't you say that you collected these things for museums? A. If they wanted to buy or not? Also for bankers.

Q. What museum in New York did you furnish

4448 any goods to? A. I sold some in Europe.

Q. I asked you what museum in New York? A. I didn't sell anything in New York.

Q. What museum in the United States did you ever sell any goods to? A. None.

Q. Did you ever buy any goods of any museum? A. Not in this country; what do you mean by "museum?" State museum, or what?

Q. You have answered the question. What about Doris Museum? A. I have bought many things there when it was sold out.

Q. When? I was in Washington Square at the time I bought them.

4449 Q. Where was the sale held? A. In Eighth avenue.

Q. Whereabouts? In the museum? A. Where it used to be.

Q. In the building? A. In the building there was a museum like Huber's Museum; in Eighth avenue; that is in Twenty-seventh or Twenty-eight street.

Q. What date was this that you bought the things? A. I don't remember; but it was when I was in Washington Square.

Q. What did you buy? A. I bought some clubs; I bought some clubs made of buffalo horn, and some of stone; and I bought—I don't remember; many other Indian things; in fact, probably I bought all

4450 the Indian curios there was in that place.

Q. How much did your purchase amount to? A. I forget.

Q. Whom did you pay for it? A. The man who was in charge there; the auctioneer, probably.

Q. Was it an auction sale? A. It was an auction sale.

Q. What year was that? A. The year I was in Washington Square; I was in Washington Square when I bought them.

Q. You bought some things of dealers in Chicago, 4451
too? A. I did.

Q. Do you remember their names? A. No; I believe it was in Van Buren street, and another one in Dearborn street; it was a German.

Q. How many times were you in Chicago purchasing goods? A. Several times.

Q. Could you give us the names of any dealer at any time of whom you purchased any goods in Chicago? A. No; there was two men with whom I was in correspondence.

Q. Can you give us the amount of any purchase you made in Chicago? A. No, I don't remember.

Q. Did you sell any parts of your collection in 4452
Chicago at any time? A. I never sold any part of my collection to anybody.

Q. Did you sell any of the goods that you bought to any person in Chicago? A. Yes, I believe one of those dealers was in my place at one time and bought something.

Q. What additions did you make to your collection between the time when you came back from New Mexico in 1897 and the time when you shipped it on board the *Bourgogne?* A. Considerable addition; an addition of three or four more trunks.

Q. What was your collection worth, in your opinion, 1897, when you came back from Santa Fé? 4453
A. I don't know; I can tell you what it was at least; I could tell you what it was when it was finished; what it was worth.

Q. When was it finished? A. I finished it in Washington Square.

Q. And until it was finished you couldn't put any figures on it; is that right? A. When a collection is complete it had more value than when it is incomplete.

Q. But I say, until it was finished you couldn't put any special value on it? A. I don't know.

4454 Q. Could you, or couldn't you? A. Certainly I could if I saw an article before me I could put a value on it.

Q. Don't you know what your collection was worth when you came back from Santa Fé? A. No.

Q. How many packages were there? A. Four or five trunks coming back from Santa Fé; four or five trunks, anyway.

Q. That was all that you had at the time? A. About.

Q. What proportion of those four or five trunks was your collection, and what part of it was the things you had for sale? A. I don't know.

4455 Q. One-half? A. I don't know.

Q. What became of the things that you collected for purposes of sale; did you sell them all out; make a clean sale of all of them when you left Washington Square? I understand you to say that a portion of these things were to constitute your collection and a portion were for sale. A. That is right.

Q. What became of the things that you had for sale; did you sell them all out clean when you left Washington Square? A. No, they were in the trunks.

Q. Then these trunks that you shipped on the
4456 *Bourgogne* contained not only your private collection, but articles for sale also, did they? A. Yes.

Q. What proportion? A. I don't know.

Q. How much in value did you add to your collection between the time when you came back from Santa Fé and the time you put them on the boat? A. I don't know.

Q. How much money did you spend in 1897 and 1898 for the purpose of increasing your collection? A. When I was in Washington Square?

Q. From the time you came back from Santa Fé in 1897 until you shipped the goods on board the

Bourgogne, how much money did you spend upon 4457
this collection? A. How many thousand dollars?
Q. How many thousands? A. I don't know; many.

Adjourned to Thursday, October 16th, at 2 P. M.

NEW YORK, October 16, 1902.

Met pursuant to adjournment; present as before.

CROSS-EXAMINATION OF GEORGE DESLIONS CONTINUED: 4458

By Mr. Haldane:

Q. Have you refreshed your memory since the last session as to the names of any other dealers of whom you bought curios? A. Yes.

Q. Will you give us the name now of any other dealers of whom you purchased any parts of your collection? A. There is a man by the name of Frost here in New York.

Q. Where was his place of business? A. I can't think of the name of the street just now one block up town side from Canal street; I don't remember 4459
the name of the street.

Q. On what street? A. One block north from Canal street, near Broadway; a few doors from Broadway.

Q. East or west of Broadway? A. East of Broadway.

Q. When did you make any purchases of him? A. During many years.

Q. You were a steady customer of his, were you? A. I was.

4460 Q. Were any goods that you purchased from him in the cases that were lost? A. Yes.

Q. What goods? A. A cradle; some tobacco pouches; some moccasins; some boats; many articles that I can't think of now.

Q. You have stated about all you can think of that you bought of Mr. Frost, have you? A. As far as I remember.

Q. What is the date of your last purchase from Mr. Frost? A. I don't remember.

Q. How long before the goods were shipped? A. I don't remember.

Q. A year before? A. I can't tell; I was in the
4461 habit of going in Mr. Frost's store and buying whatever I wanted to buy.

Q. Did you have an open account with him? A. I was buying cash.

Q. Always paid cash? A. I was buying cash.

Q. Did you always pay cash? A. Not always.

Q. To Mr. Frost? A. Not always.

Q. Did he have an open account in your name, with you, at the time these goods were shipped? A. I don't remember.

Q. Did you owe him for any of these goods at the time they were shipped? A. I don't remember.

Q. Have you ever heard from Mr. Frost since
4462 then? A. Yes.

Q. Has anything ever been said to you by Mr. Frost since these goods were shipped, as to your owing him for some of those goods? A. I don't remember.

Q. You don't remember? A. I don't remember; that is my answer.

Q. You don't know whether you owed him or not? A. Since that I purchased something—

Q. No; I mean for any goods that were on the *Bourgogne?* A. Not that I remember; no.

Q. That isn't what I asked you; do you know

whether you owed him or not for any of the goods 4463
that were on the boat? A. No.

Q. You don't know? A. I don't know; I don't think so.

Q. What other dealers have you thought of since the last session, of whom you purchased any part of these goods? A. James Finlay.

Q. Where was his place of business? A. He was in some Reservation, and afterwards went to Kansas City.

Q. Indian Reservation? A. Yes.

Q. What tribe of Indians? A. The Sioux.

Q. Is he there still? A. The last correspondence I had with him he was in Kansas City. 4464

Q. Was that since the boat was lost? A. No; that was before.

Q. How long before? A. Shortly.

Q. What was his business? A. I don't know what was his business, but he would sell me some Indian curios; he was an Indian trader, I believe.

Q. How did you become acquainted with him? A. Through correspondence.

Q. Did he write to you or did you write to him first? A. I don't remember.

Q. Did you ever see him? A. I saw him.

Q. Where? A. In Kansas City.

Q. When? A. Some years ago; before *La Bour-* 4465
gogne sunk.

Q. Is that the nearest you can come to giving us the date when you saw him? A. Yes; I don't remember; I don't generally pay any attention to those details. A collector will have a very good memory for his collection and a very poor one for any other thing; as you have seen it with many professional men, such as a doctor, a lawyer, etc., his mind isn't much on anything that doesn't concern him directly; it was immaterial to me; I was col-

4466 lecting; the thing I remember the best is my collection.

Q. How many times did you see Mr. Finlay in Kansas City? A. I don't know.

Q. Did you see him frequently? A. No, no; I didn't stay but a few days in Kansas City.

Q. When was that? A. Some years ago.

Q. What were you doing in Kansas City? A. I was traveling.

Q. For pleasure? A. No.

Q. For what? A. I presume for business; I was going to Santa Fé—

Q. What business were you in at that time? A.
4467 I was going to Santa Fé, and going to Santa Fé I stopped to see him.

Q. You went to Santa Fé in 1896? A. Probably.

Q. That was when you saw Mr. Finlay in Kansas City? A. I guess so.

Q. What did you buy of him? A. Indian curios.

Q. What? A. Anything in Indian curios.

Q. Don't you remember a single article that you bought of him? A. Not particularly; no.

Q. How much money did you pay him for what you did buy? A. I don't know.

Q. A hundred dollars? A. I don't know.

Q. A thousand dollars? A. I don't know.

4468 Q. What did you do with the goods you bought of him? A. Kept them; sold some, probably.

Q. Did you take them all with you to Santa Fé? A. I said before that Mr. Finlay was sending me some goods to New York.

Q. When? A. When he was in San Francisco.

Q. I asked whether the goods you bought of him in Kansas City on your way to Santa Fé you took with you? A. I didn't say I bought some goods from him when I was in Kansas City.

Q. What did you say about that? A. I said I visited him.

Q. Now I ask did you buy any goods of Mr. Fin- 4469
lay at that time, when you saw him in Kansas City? A. None, of my recollection.

Q. Did you buy any goods? A. Not of my recollection.

Q. You don't know whether you did or not; is that it? A. That is it.

Q. Don't you remember whether you took any goods from Kansas City to Santa Fé that you purchased in Kansas City? A. I don't remember.

Q. Did you have any of your collection, or stock of goods, with you when you went from Kansas City to Santa Fé? A. Yes.

Q. Had you brought them from New York? A. 4470
From Philadelphia.

Q. What were they in? A. In trunks.

Q. Did they go on the same train that you did? A. I guess so.

Q. Don't you know? A. I shipped them.

Q. How? A. What do you mean by how I shipped them?

Q. By what means of transportation did you ship them? A. Railroad.

Q. By express or by freight? A. I don't know.

Q. Don't you know how many packages there were? A. Probably six trunks, or seven.

Q. Remembering that there were six or seven 4471
trunks, don't you know whether you sent them by freight or by express? A. I don't; but very likely by freight.

Q. Give the name of another dealer whose name you have remembered since the last session, of whom you purchased any part of these goods? A. Buckskin Jo.

Q. Who is he? A. He was a show man.

Q. What kind of a show did he run? A. Wild west; something of that character; fancy shooting.

Q. He was one of Buffalo Bill's staff, or em-

4472 ployees, was he? A. I don't know if he was with him; if he has been I don't know.

Q. When did you first form his acquaintance? A. Years ago.

Q. How many years ago? A. Ten years, probably.

Q. Where? A. In New York.

Q. When he was with Buffalo Bill? A. No; I don't know who he was with.

Q. Where did you see him in New York? A. I believe in Huber's Museum.

Q. Who introduced you to him? A. I don't remember.

4473 Q. Do you mean Huber's Museum on Fourteenth street? A. Yes.

Q. Did you purchase any goods of him at that time? A. Yes.

Q. How did you find out that he had any to sell? A. I saw them.

Q. Were they on exhibition at Huber's? A. They were.

Q. What did you buy of him on that occasion? A. Nothing.

Q. When did you buy any goods of him? A. After.

Q. How long after? A. I don't know.

4474 Q. A year? A. A few months probably.

Q. Where was he then? A. He came to see me in the house.

Q. Where was that? A. Fourteenth street.

Q. Whereabouts on Fourteenth street? A. Between Seventh and Eighth avenues.

Q. What did you buy of him then? A. I bought an Indian tent and other articles.

Q. What? A. Other Indian articles; curios; I know I bought other things.

Q. Is the Indian tent the only thing you can remember that you bought of him? A. Yes; the only

thing that I can mention. I remember buying 4475
other articles.

Q. What do you remember buying? A. Other things; other Indian curios.

Q. But you can't give me a description of a single other article? A. I know I bought other Indian curios from him.

Q. Did you pay him in your house? A. Certainly I did. I remember also several collars made of grizzly bear claws——

Q. How much did you pay him? A. That I don't remember; I bought three scalps from him.

Q. How many collars? A. Two or three; three I believe. 4476

Q. You say you paid him in your house? A. Yes.

Q. How much did you pay him? A. That I don't remember.

Q. How much did you give him for the Indian tent? A. I don't remember.

Q. Was that tent in these packages that were shipped? A. That tent was in these packages that were shipped, yes.

Q. How much did you pay him for the collars? A. I don't remember; I bought probably the whole in one bunch.

Q. How much did you pay him for the scalps? 4477
A. I don't remember.

Q. Each of these articles that you have mentioned that you bought of Buckskin Jo was an article well known to dealers and collectors, was it? A. It was.

Q. Having an ascertainable market value? A. Certainly.

Q. Have you seen Buckskin Jo since that time? A. Many times.

Q. Have you bought anything else of him since that time? A. Yes.

4478 Q. When was the next time you bought anything of him? A. I don't remember; some time after that.

Q. How long before these cases were shipped? A. Shipped where?

Q. On the *Bourgogne?* A. I don't know; some years ago.

Q. Where was it you saw him the second time? A. In my place.

Q. Were you still living on Fourteenth street? A. I met him on the street, and I didn't take any note where I met him.

Q. But he came to your house? A. Certainly.

4479 Q. The second time you bought any goods did you buy them when he was at your house? A. Yes; he used to come to my place when he would ask me to lend him eight or ten or twenty dollars, and say he would square it with some article that he would give me.

Q. Can you give us any other articles that you ever purchased of Buckskin Jo, other than the ones you have enumerated? A. No.

Q. Do you remember any article that he ever gave you in return for any of these loans of money? A. Yes; always gave me something.

Q. Do you remember any particular article that
4480 he ever gave you? A. No; one time I bought a pair of pants made of buckskin, and a coat.

Q. A buckskin coat? A. A buckskin coat, and some western hats.

Q. Were those articles in the cases when they were shipped? A. I don't remember; I may have sold them before; I don't know.

Q. They were not intended for your collection? A. I don't remember.

Q. You wouldn't sell them if they were for your collection? A. Certainly not; I would keep them.

Q. You think you sold these, do you? A. May 4481
be I did.

Q. Is that all you can tell us about the amount of your purchases from Buckskin Jo? A. Yes.

Q. What other dealers have you thought about? A. A man by the name of Schops.

Q. What was his business? A. He was a dealer in shell curios.

Q. Where was his place of business? A. Fourth avenue.

Q. Where? A. About Tenth or Eleventh street.

Q. Did he have a store there? A. Yes.

Q. Is he there yet? A. No.

Q. When did he move from there? A. Some 4482
years ago.

Q. Before the cases were shipped? A. Yes.

Q. Don't you know where he is now? A. He is I believe in Calvary Cemetery.

Q. You mean he is dead? A. Yes; that is where he is now.

Q. Over what period of time did your purchases from Mr. Schops extend? A. Some years.

Q. Up to the time when these goods were shipped? A. No.

Q. How long before that had you ceased purchasing of him? A. I don't remember.

Q. Did you buy goods of him more than once? 4483
A. Yes.

Q. Were you a regular customer of his? A. I used to go in and if I saw something that would please me, ordered it.

Q. How many times have you purchased goods from him? A. I never counted.

Q. Can't you give us some idea of the number of purchases you made? A. No.

Q. You couldn't say whether you purchased goods of him twice or twenty times; is that right? A. I visited this man for several years.

4484 Q. (Repeated.) You couldn't say whether you purchased goods of him twice, or twenty times; is that so? A. Over twenty times.

Q. What did you buy of him? A. I don't know; anything that I saw that pleased me.

Q. Was anything that you bought of him in these cases when they were shipped? A. Yes.

Q. What? A. Some little miniature Alaskan boats.

Q. What did you pay him for them? A. I don't remember.

Q. Didn't you testify on your direct examination what that boat was worth? A. Probably.

4485 Q. How did you form your opinion as to what it was worth, if you don't know what was paid for it? A. That has nothing to do with what I paid for it; if I find twenty dollars on the street is it good for twenty dollars?

Q. Is that the theory upon which you fix your values upon this examination? A. Not the market value.

Q. (Repeated.) Is that the theory upon which you fix your values upon this examination, that it doesn't make any difference what you paid for the goods? A. I presume not; if I find twenty dollars on the street is it worth twenty dollars, or one

4486 penny? If I buy an article worth twenty dollars and pay one dollar am I compelled to sell it for one dollar, or two dollars? If you know anything about it I would like to have your opinion.

Q. Have you given us every article that you remember purchasing of Mr. Schops? A. I said I was in the habit of visiting him probably every day in the week.

Q. I know you said that; I am asking you a different question. A. And whenever I saw something I would like to have I would buy it; whatever I

bought was recorded in my books and I haven't got them. 4487

Q. Is that all the information you can give us about your purchases from him? A. Yes.

Q. What was the total amount in value of your purchases from him? A. I don't know.

Q. You have no idea? A. I have no idea.

Q. Either of any one purchase, or of all of them put together; you have no idea? A. No.

Q. What about the goods you purchased from him; were they bought for your collection, or for purposes of sale? A. Some; the best I would add to my collection, and the others I would dispose of; some I would buy on speculation also. 4488

Q. How many had you disposed of before you shipped your collection on the *Bourgogne?* A. I don't know.

Q. Were any of the goods that you bought of him in these cases that you shipped? A. Yes.

Mr. Benedict: You have asked him three times about this.

Q. Give us the name of another dealer of whom you purchased any goods forming your collection? A. Another man that was exhibiting in Huber's; exhibiting Indian curios.

Q. Do you know his name? A. I forget his name; but he can be found easily from Huber's. He was exhibiting a collection of Indian curios. 4489

Q. When was this? A. Oh, seven or eight years ago I believe—no, his name was Omaha Charlie, I believe; I believe so.

Q. What did you buy of him? A. Whatever he wanted to sell or dispose of from that collection; duplicates of anything he had. I stated before, a hundred times, that I was always ready to buy any article of Indian curios.

Q. You are unable to give us the details of the

4490 goods you purchased from Omaha Charlie, are you? A. Many; moccasins, leggings, rattles, pipes, tobacco pouches.

Q. Did you buy all that class of goods from Omaha Charlie? A. Yes.

Q. Some of each of those you have mentioned? A. I said yes.

Q. How many tobacco pouches did you buy of him? A. I don't know.

Q. How many moccasins? A. I don't know.

Q. Don't you know the number of any class of goods you bought from him? A I don't.

Q. How many times did you deal with him? A.
4491 I don't know; it is in my books; I don't carry those books with me. Ask any dealer in the city of New York what he bought, or how much he purchased some years ago; that is a ridiculous question; I would like you to ask a question of sense.

Q. What was the total amount of your purchases from Omaha Charlie? A. I don't know.

Q. Can't you give us the amount within a hundred dollars or so? A. I can't; several hundred dollars probably.

Q. Do you think you bought over a thousand dollars worth of purchases from him? A. I don't know.

4492 Q. What is your opinion? A. I don't remember.

Q. Have you thought of any other dealer of whom you purchased any part of these goods? A. I will produce to you next time—I have found a sort of a book where I have many addresses of dealers I don't remember to-day; I forgot that little book to-day.

Q. Where is that book? A. I have it at home.

Q. You say that contains a list of dealers? A. Many; I didn't look at it; I don't know if it contains more.

Q. How is it that that book didn't go on the

Bourgogne with the others; why not? A. Because 4493
it was in my pocket probably; it is a memorandum book; not a business book.

Q. Why didn't you bring it to-day? A. I said I forgot it.

Q. I understand you to say you will produce it next time? A. I will produce it next time.

Q. You testified, did you not, that you had correspondence with dealers in all parts of the world? A. Yes.

Q. Is that right? A. That is right.

Q. Give us the name of some dealer in some other part of the world than you have yet mentioned, with whom you had correspondence, and of whom you 4494
purchased articles? A. I don't remember any others.

Q. Did you buy anything of any dealer in Europe? A. Yes, I did.

Q. Where did he live? A. In his house I guess.

Q. Is that the best answer you can make to that question? A. I presume he lives in his house, or in a hotel; I don't know where he lives.

Q. What town or city or country did he live in? A. I met some in——

Q. This particular one. A. I made no reference to any particular one.

Q. I am asking for any particular one. A. I 4495
don't remember the name of any particular one.

Q. Do you know the residence of any particular one? A. Yes.

Q. Where? A. There is antiquarians all over the world; some in Paris and some in Lyons, and some in Switzerland and some in Italy.

Q. Don't you understand I am asking you about persons with whom you had dealings. A. I said before, I don't remember.

Q. Do you mean to say you have had dealings

4496 with persons living in Paris and Lyons and all over the world? A. If you travel——

The Commissioner: Answer the question.

The witness: If you go to Philadelphia and you see a dealer in curios, or an antiquarian, you go in a store and buy an article or something that you want. I said many times before that I can't name the persons; if I had the addresses of those people I probably was in correspondence, exchanging or buying some article; but I don't remember them to-day, unless I carry the book with me. This question has been put to me about twenty times.

Q. Does that book that you have mentioned in-
4497 clude the names of dealers in foreign countries? A. I don't know.

Mr. Benedict: The book is the best evidence.

Q. Do you know whether or not that book has got the names of any dealers living outside of the United States?

Objected to on the ground that the book is the best evidence. Objection overruled.

A. I don't know.

Q. Do you remember making any purchases for your collection in any European city? A. Yes.

4498 Q. Where? A. I bought——

Q. Where? A. In Basle, Switzerland.

Q. When was that? A. At the time I want to Europe.

Q. When was that? A. After the Chicago Fair; after the World's Fair I went abroad.

Q. How long did you stay in Europe on that trip?

Objected to as already answered. Objection overruled.

A. A year and a half or two years.

Q. During all that time were you making purchases in Europe? A. I was.

Q. What other city or town in Europe did you 4499
make any purchases in? A. Lucerne, Switzerland.

Q. What did you buy at Basle? A. I bought some pipes.

Q. For your collection, or for sale? A. For my collection, and some for sale.

Q. Anything else? A. Some Napoleon engravings; pictures of Napoleon, etchings, engravings, miniatures.

Q. Wasn't that your wife's destination when she was about to return on the *Bourgogne;* Basle? A. I don't remember; we were to meet in Paris.

Q. You don't remember where she was ticketed to? A. I don't remember whether it was Basle or 4500
Paris.

Q. What was the amount of your purchases in Basle? A. I don't know.

Q. Were any of the goods in these trunks that you lost? A. I have already stated, yes.

Q. When did you state that? A. On your question before.

Q. What did you buy when you were in Lucerne? A. Miniatures, ivory; Napoleon the First, painted on ivory; Josephine; different miniatures of Napoleon the First.

Q. Anything besides that? A. Medals; religious medals; some ivory crucifixes, and bronze cruci- 4501
fixes; small bronze crucifixes; antique.

Q. Did you buy them all at one place, or at different places in Lucerne? A. Different places.

Q. What did you pay for the miniature of Napoleon? A. I don't remember; some $20, $30, $50.

Q. How many miniatures of Napoleon did you buy? A. I don't remember.

Q. What was the lowest priced one of the lot? A. Fifty francs or ten dollars; $12; sixty francs.

Q. How many miniatures of Josephine did you buy; you mean the Empress Josephine? A. Yes; one.

4502 Q. What did you pay for that? A. 150 francs; $30.

Q. Are you an expert in the value of paintings? A. Not exactly; but I am quite familiar.

Q. Were these purchases made for your collection; the one you have just mentioned in Lucerne, or for sale again? A. Some were for collection, and some were for sale.

Q. Were any of these goods purchased at Lucerne in these cases that were shipped? A. They were.

Q. Which? A. Napoleon the First; Josephine.

Q. How many of the miniatures? A. I don't
4503 know; may be ten or twelve.

Q. How many were there altogether, when you purchased them? A. Twenty-five or thirty.

Q. Which; twenty-five, or thirty? A. Twenty-five or thirty and probably more than thirty.

Q. Is that the best information you can give us as to the number of miniatures you bought of Napoleon? A. As far as I remember; I said one Napoleon and one Josephine before.

Q. Only one Napoleon and one Josephine? A. Several of Napoleon, probably in different costumes.

Q. How many miniatures of Napoleon did you
4504 buy? A. I don't know.

Q. How many of Josephine? A. I don't know; one, I know; Napoleon more than one.

Q. But only one of Josephine? A. That is right, as far as I remember.

Q. How many of these ivory crucifixes did you buy? A. One.

Q. How many of the bronze crucifixes? A. Altogether?

Q. Yes; in Lucerne. A. I don't know; one or two; may be I didn't buy them all in Lucerne; I don't know.

Q. Why did you buy this ivory crucifix; was there anything special or unique about it? A. It was an antique crucifix. 4505

Q. Do you know who made it? A. I don't remember; it was an Italian piece.

Q. How much did you pay for it? A. 250 francs; $50.

Q. Who fixed the value; was that what a dealer asked, or did you fix the value? A. That is what I paid.

Q. How much did he ask you? A. I don't remember; more probably; I paid what the asked me.

Q. You always pay what they ask you, do you? A. Not necessarily. 4506

Q. Even the Indians? A. Because I thought it was worth that; if I thought it was worth that, certainly.

Q. Have you told us all that you purchased in Lucerne, as near as you are able to? A. As far as I remember; I bought some pipes in Lucerne.

Q. What sort of pipes? A. European pipes; French and German.

Q. How many pipes did you buy in Lucerne? A. Several.

Q. A dozen? A. No; yes, about twenty pipes I bought.

Q. What was there about these pipes that made you purchase them; was there anything special or unique about them? A. Old; rare; unique. 4507

Q. Do you remember any one of the pipes that you bought there, so as to be able to describe it now? A. Yes.

Q. Let us have a description of it. A. One head, the Dance of the Dead; what you call in German Tode Tanz; carved.

Q. What material was that of? A. That was meerschaum and silver.

Q. How much did you pay for that? A. I paid $35; 150 francs.

4508 Q. Were that pipe and the other pipes you have mentioned in these cases when they were shipped? A. Yes, they were.

Q. Was this pipe purchased for your collection, or for sale; did you have it on exhibition with your collection at these different places where you lived in New York? A. I presume so.

Q. Don't you know whether you did or not? A. Well, in fact that pipe was very brittle, or fragile; and I kept it many times in a box with cotton in my chimney or on top of a table; to show it to some of my friends or customers.

Q. Have you given us your best recollection as
4509 to what you purchased in Lucerne? A. As far as I remember; there is many other things probably that I bought that I don't remember.

Q. What other European town or city did you buy any goods in for this collection? A. A little in every town where I went.

Q. What town did you go to? A. I went in Germany and Italy, in Geneve and Berne; I bought many things in Geneve and Berne.

Q. Did you go to Germany? A. Yes.

Q. What towns did you visit there? A. Baden.

Q. What other town? A. Carlsruhe.

Q. Were you making this trip all the time for
4510 the purpose of adding to your collection? A. I don't remember; some, yes.

Q. Was that the object of your trip; to purchase things for your collection? A. I say partly.

Q. Did you buy anything at any of these other towns; Berne or Geneva? A. Yes.

Q. Which town? A. The town I mentioned.

Q. Which was that? A. Berne; Geneve.

Q. What did you buy in Berne? A. I don't remember.

Q. Do you remember where you bought anything? A. Of antiquarians.

Q. At a store? A. At a store, yes. 4511

Q. More than one store in Berne? A. Yes.

Q. Do you remember the names of any of the people that kept those stores? A. I don't.

Q. Are those names in that book you have got of the people in Berne? A. I don't know.

Q. What did you buy in Berne? A. I don't remember.

Q. Don't you remember a single article you bought in Berne? A. No.

Q. If you don't remember a single article that you bought in Berne, how can you testify you bought anything; how do you know you bought anything, if you can't remember a single article? 4512
A. I don't know.

Q. How is it about Geneva; do you remember buying anything there? A. Yes.

Q. What? A. Many things.

Q. Well, what? Can you tell us a single article you purchased in Geneva? A. Oh, anything in curios; anything in antiques.

Mr. Benedict: The qu[illegible]on is can you mention any one article.

A. (Continued.) Some more pipes; most of my collection of pipes, to cut it short, was bought in Europe; my collection of European pipes were 4513
bought during that trip; most of them in those different towns; if I would see a pipe that wasn't in my collection I would buy it.

Q. Do you remember what pipes you bought in Geneva? A. No.

Q. Where did you buy them? A. In antique stores.

Q. You don't remember any particular store where you purchased any particular article in Geneva? A. No.

Q. And you don't know the name of any person

4514 in Geneva of whom you purchased anything? A. No, I don't.

Q. Do you remember the price that you paid for any article that you bought in Geneva? A. No.

Q. Do you know whether anything you bought in Geneva was in these trunks that you shipped? A. Yes, there were.

Q. What? A. Whatever I bought.

Q. Is that the best answer you can give? A. Yes.

Q. Did you buy anything at Carlsruhe? A. I don't remember.

Q. Do you remember any other town or city in
4515 Europe in which you bought any part of your collection on that trip? A. I stated before, some religious medals in Italy.

Q. What town in Italy? A. Milan.

Q. How long were you in Milan? A. A month.

Q. Were you purchasing things for your collection during all that time that you were in Milan? A. Anything that I didn't have in my collection I would purchase.

Q. What did you buy in Milan? A. Religious medals.

Q. Now can't you give us a description of any of these medals? A. No; I don't remember.

4516 Q. How do you know they were religious, if you can't describe them? A. Because I remember they were.

Q. What were they made of? A. Silver.

Q. All of them silver? A. I presume so; some were other medals, but mostly silver.

Q. What did you pay for any of them? A. I don't remember; if I had known the *Bourgogne* was going to sink I would have taken a memorandum of all that, and would have kept my book here.

Q. Can you give us the price that you paid for a single one of these medals that you have men-

tioned? A. A few dollars apiece; five dollars 4517
apiece, ten lire, twenty, or fifty; I don't remember exactly how much.

Q. Have you mentioned all that you bought in Milan? A. As far as I remember, yes; some crucifixes I bought there too.

Q. Which of these articles were in these trunks that you shipped? A. Just the ones I am referring to; those medals.

Q. Do you remember packing those medals? A. I remember packing those medals.

Q. You looked them over when you packed them? A. I don't know; I packed them in tissue paper and cotton. 4518

Q. You had them in your hand and wrapped them in tissue paper? A. Certainly.

Q. That is only about four years ago? A. Yes.

Q. You had every one of them in your hand when you were packing them? A. Probably.

Q. And you can't describe a single one of them? A. Some were Christ baptized in the garden; Notre Dame de Lourdes and Notre Dame de Lorette; some were written "Lourdes" and some were written "Lorette."

Q. There was more than one of that subject, was there? A. That is what I say.

Q. How many were there of that particular sub- 4519
ject? A. I don't know.

Q. What other subject was illustrated by any of these medals? A. The Communion of Christ.

Q. Do you mean the Last Supper? A. I presume so.

Q. Is that what you mean? A. That is what it means; I don't know what it means in English.

Q. With the disciples sitting at the table? A. Yes.

Q. What other subject do you remember was illustrated by any of these medals? A. St. Peter.

4520 Q. Well, go on. A. That is all that I remember.

Q. These are the medals, all of which you bought in Milan and different parts of Italy? A. Most of them are.

Q. Why didn't you tell me what these medals illustrated when I asked you if you remembered what you bought in Milan? A. I didn't remember.

Q. This all came to you since I asked you that question? A. Yes.

Q. In what other town in Italy besides Milan did you buy any part of your collection? A. I don't know.

Q. Do you know whether you did buy anything
4521 in any other town? A. I don't remember.

Q. What other country in Europe did you visit and did you purchase in for the purpose of this collection? A. I don't remember.

Q. What about the East Indies? Did you have any correspondence with any persons in that part of the world; any dealer? A. Yes, I had some correspondence with a man in San Francisco who was selling some of those goods; but I bought some here in New York.

Q. I am asking about the East Indies; China, and Japan and Hindustan; did you have any correspondence with any dealers in that part of the
4522 world? A. That is not what I am referring to.

Q. I am asking the question; not you. That is what I am asking? A. I don't remember.

Q. Let me ask you, is it possible that you don't remember whether or not you ever had any correspondence with a dealer in curios in Hindustan, China or Japan? A. I don't remember.

Q. Did you ever have any correspondence with any dealer in curios living in any part of Africa or Egypt? A. Yes.

Q. Who is that? A. I don't remember the name.

Q. Where did he live? A. In Cairo, and some near Jerusalem.

Q. Did your correspondence with this dealer in 4523
Cairo result in your purchasing anything of him? A. I don't remember.

Q. Let me ask you again; do you mean to say that you don't remember whether you ever purchased anything of a dealer in curios in Cairo, Egypt? A. I bought some from this man when he was in this country; in the World's Fair.

Q. How do you know he came from Cairo, Egypt? A. Because he told me so.

Q. But you had correspondence with him when he was in Cairo, didn't you? A. I don't remember.

Q. Didn't you testify a few minutes ago that you 4524
did have correspondence with him in Cairo? A. Where is that?

Q. Well, didn't you? A. Will you repeat me that sentence?

Q. No, sir, I won't repeat anything; answer the question yes or no. A. I don't know.

Q. Where was it near Jerusalem that this other person lived with whom you said you had correspondence? A. Sour.

Q. What country is that in? A. Egypt; Palestine I guess.

Q. Which; Egypt or Palestine? A. I don't know; I haven't the chart before me. 4525

Q. Did you say it was near Jerusalem? A. Yes, I did.

Q. Doesn't that help you out? Don't you know whether it was in Palestine or Egypt? A. I don't know.

Q. What was the name of this man with whom you had the correspondence? A. I don't know.

Q. Did you ever meet him? A. Yes.

Q. Where? A. Here.

Q. In this court room? A. In New York.

Q. When? A. Some years ago.

4526 Q. After the World's Fair in Chicago? A. And before.

Q. Did you buy any goods from him? A. I don't remember.

Q. Did you have any correspondence with any dealer or collector in any part of South America? A. Yes.

Q. Where did that person live? A. In San Francisco.

Q. I asked you about South America. A. He had a correspondent in San Francisco, that same man.

Q. Did you have any correspondence with any
4527 person who lived in South America; any country of South America? A. I don't remember.

Q. Let me ask you again, is it possible that you don't remember whether or not you ever had any correspondence with any dealer or collector of curios living in any country of South America? A. No, because I haven't got my book before me.

Q. Is that the book that you promised to bring? A. My business book.

Q. What book? A. The business book.

Q. What did you keep in that book? A. The writing that was on the sheets; the addresses of dealers and customers.

4528 Q. It was an address book, was it? A. It was an address book.

Q. Was that all it was; an address book? A. Yes.

Q. And that is the reason you can't answer these questions, because you haven't got that address book; is that right? A. Yes.

Q. On your direct examination you said something about curios from the South Sea Islands; did you have any correspondence with anybody from the South Sea Islands? A. I don't remember.

Q. Have you mentioned now all the persons liv-

ing in other parts of the world than the United 4529
States of America, with whom you can remember having had any correspondence on the subject of the purchase or sale of curios? A. Yes.

Q. At your last examination you said that some dealer was in your place in Chicago and bought something (page 223)? A. Yes.

Q. What did you mean by your place in Chicago? This question was put to you (page 223). "Q. Did you sell any of the goods that you bought to any person in Chicago," and you answered as follows: "A. Yes; I believe one of those dealers was in my place at one time and bought something." A. Yes.

Q. Where was your place in Chicago? 4530

Mr. Benedict: He does not say so; I object to the words "in Chicago."

Q. Still I ask you the question, where was your place in Chicago?

The Commissioner: I think the question carries with it the suggestion that the witness had stated that he had a place in Chicago, and I do not think that is so. For that reason I think the question is objectionable.

Q. Did you have any place in Chicago? A. Never.

Q. Did you make any sales in Chicago? A. Yes. 4531

Q. Where did you make them; where were you? A. In New York.

Q. I asked you if you made any sales in Chicago? A. I made a sale in New York for Chicago.

Q. (Repeated.) I asked you if you made any sales in Chicago? A. No.

Q. You never made a sale in Chicago? A. No.

Q. That you are sure of? A. Positive.

Q. And you haven't testified different to that on your examination? A. Not unless you misrepresent me.

4532 Q. On your return from Pine Ridge you stopped off in Philadelphia and made some purchases, didn't you? A. I never said that.

Q. Didn't you? A. Not that I remember.

Q. Do you know whether or not on your return from Pine Ridge you stopped off at Philadelphia and made any purchases? A. I stated before——

Q. I want you to answer the question. A. This is misrepresented again.

Mr. Benedict: The question is whether you did; not what you said; whether you stopped off and made any purchases.

4533 A. No.

Q. On that same trip that you went to Pine Ridge you did come back through Chicago and Philadelphia, didn't you? A. Through Chicago.

Q. You came through Chicago and Philadelphia back? A. No, no.

Q. Didn't you come back to Philadelphia from Pine Ridge? A. No.

Q. Then please explain this; you were asked at the last session (page 199) "Q. Where else did you go besides to Pine Ridge," and the answer was: "I don't know; in Chicago. I bought some in Philadelphia, too; I came back to Philadelphia." Do
4534 you remember answering that? A. No, I don't remember answering that; no.

Mr. Benedict: Read the previous question.

Q. I will. "Q. At Pine Ridge? A. I say on that trip from the time I left New York until I came back to New York." Then follows the other question and answer to which your attention has just been called. Did you make any purchase in Philadelphia on your way back from Pine Ridge to New York.

Mr. Benedict: He doesn't say so.

Question withdrawn.

Q. Did you make any purchase of goods for your collection in Philadelphia when you came back to Philadelphia after going to Pine Ridge? A. Not that I remember; no. 4535

Q. When was it that you bought goods in Philadelphia then? A. When I was in Philadelphia one time for two months.

Q. When was that with reference to your trip to Pine Ridge? A. That was before going to Santa Fe that I was in Philadelphia.

Q. Was that before you went to Pine Ridge? A. Before going to Santa Fe.

Q. (Repeated.) Was that before you went to Pine Ridge? A. No. 4536

Q. Then it was after you had been to Pine Ridge that you lived in Philadelphia for two months? A. That was after.

Q. You did buy some goods in Philadelphia after you got back from Pine Ridge? A. Not on that occasion. That was just after I was in Philadelphia for two months, before I went to Santa Fe. That is what I testified.

Q. Was that the time you referred to when you bought some goods? A. Yes.

Q. What year was that? A. I went abroad after the World's Fair, and stayed about two years and then came back. 1895, I guess. 4537

Q. What part of your collection did you purchase in Philadelphia? A. I don't remember what part.

Q. What articles of your collection did you purchase in Philadelphia? A. I don't know; I stated that I bought some articles.

Q. You can't remember which articles you bought? A. No.

Q. Nor what you paid for them? A. No.

Q. Nor the names of the persons from whom you purchased them? A. No.

Q. Do you remember whether any of the goods

4538 purchased in Philadelphia were in these cases when they were shipped? A. I don't remember.

Q. When did you arrange to have Indians out west gather goods for you; did you ever make any such arrangements? A. Yes.

Q. With whom did you make that arrangement? A. Black Heart.

Q. Where did you make that arrangement? A. Here in New York.

Q. When? A. Many years ago.

Q. Where did those Indians live that were to gather materials for you? A. In different reservations. South Dakota.

4539 Q. What reservation? A. Different reservations.

Q. What? Name them? A. I forget the names now.

Q. What tribe did Black Heart belong to? A. Sioux.

Q. What particular Sioux? A. Dakota Sioux; Ogallala Sioux.

Q. What was that arrangement?

Objected to as immaterial.
Withdrawn.

Q. Did Black Heart gather up any goods for

4540 you? A. Yes.

Q. During what years? A. I don't remember.

Q. Can't you tell us any year that he gathered up a collection for you? A. 1892, 1893, 1894; during several years.

Q. 1895? A. Up to the time the *Bourgogne* sailed, and other goods, too.

Q. Where were these collections that they gathered delivered to you? A. In the house.

Q. In New York? A. In New York.

Q. Who delivered to you the first collection gathered for you under this arrangement? A. Good Boy.

Q. What was his Indian name, do you know? 4541
A. I forget his Indian name.

Q. That was in 1892? A. Or 1893.

Q. Where was that delivery made? A. In my place.

Q. Where was that; where did you live then? A. In Fourteenth street.

Q. Was more than one collection delivered to you by the Indians in the year 1892? A. What do you mean by more than one collection?

Q. More than one collection that they had gathered under this arrangement; did they deliver goods to you more than once? Why do you laugh? A. I laugh because I don't understand you. A 4542
collection or articles are entirely two different things. The same as a building or a stone. How many buildings in this room, for instance.

Q. You object to the word "collection," do you? A. No, but you can use it if you please; but I can't help laughing.

Q. How many times in the year 1892 did any of these Indians deliver to you the goods that they had gathered for you under this arrangement? A. Several times probably, during the time they were in New York.

Q. I am asking about 1892, remember? A. 1892 or 1893.

Q. I am asking about 1892? A. I don't know; it 4543
was either; about the time of the World's Fair that I remember distinctly; before and after.

Q. What became of the goods delivered to you in 1892? A. I don't know what became of them.

Q. You don't know whether any of them were on the *Bourgogne* or not? A. Yes; some were.

Q. I thought you said you didn't know what became of them? A. In the way you say it.

Q. Did any of these Indians deliver any of the goods to you under this arrangement in 1893? A.

4544 I was in the habit of purchasing everything the Indians would sell to me when they were here in New York, and when they were out, as they would gather goods they couldn't keep until they came here, if that man didn't come himself he would see that some of his relatives or friends would deliver them to me.

Q. Did any of these Indians deliver to you any goods for your collection under this arrangement in 1893? A. As I said; as I explained.

Q. Yes or no? A. As I explained it.

Q. Will you answer that question yes or no?

Objected to.

4545

The Commissioner: I think Mr Haldane is entitled to that answer.

Mr. Benedict: I think he is entitled to the explanation only. The witness has given that.

Mr. Haldane: The only explanation he gives is the arrangement. I want to know whether any goods were delivered under that arrangement in 1893.

A. As I explained it, yes.

Q. Were they delivered to you in Fourteenth street? A. They were.

Q. Do you remember what goods were delivered to you? A. Yes.

4546

Q. What were they in 1893? A. Moccasins; leggings; war bonnets; dancing belts; blankets; all sorts of Indian trinkets; pouches; pipes.

Q. Who delivered these goods to you in 1893? A. Good Boy; Charging Crow.

Q. How much did you pay for them? A. I don't remember.

Q. What became of them; did you sell them or were they in these cases that were shipped? A. Some I sold, and some I kept in my collection; the best specimens I would keep in my collection.

Q. What proportion did you keep and what pro- 4547
portion did you sell? A. I don't know.

Q. Were any goods delivered to you by any of these Indians under this arrangement in 1894? A. They had been delivering to me some goods ever since that time up to the time, the last time Buffalo Bill was here, which was in the spring; I stated before, time and again; every year.

Q. They delivered to you goods under this arrangement every year? A. Every year when Buffalo Bill's show was here.

Q. From 1892 to 1898? A. Yes; at the time when Buffalo Bill was in Ambrose Park, Brooklyn.

Q. What was the gross amount you paid the 4548
Indians under this arrangement from 1892 to 1898 for goods delivered under it? A. Some Indians would sell me for $20, some for $40, some $50 and some a hundred dollars' worth of goods; and I had about 30 to 40 men visiting me during the period they were here. They would come, ten or fifteen at a time. Two or three squaws, women, would come at the same time to my place; from that time to Washington Square.

Q. I asked you, and I repeat the question, what was the gross amount paid by you to these Indians under this arrangement, from 1892 to 1898? A. I don't know.

4549

Q. Can you give us any idea? A. Not the slightest, unless I had my business book before me.

Q. Will you say it was over a thousand dollars? A. I will say nothing; if I had my book I could tell you.

Q. What is the greatest amount you ever paid them that was for goods delivered under this arrangement? A. I don't know.

Q. Have you any thing by which you could refresh your recollection upon that point as to the greatest amount you ever paid for these goods for

1522

4550 a single delivery of goods under that arrangement? A. No; because—now there is—an Indian will trade you a tobacco pouch and you will offer him $5 or $10; it is more than impossible to tell.

Q. You bought some goods of Captain Phillips in New York, didn't you? A. I did.

Q. At your last examination you were asked, (page 189), having reference to goods purchased of Captain Phillips: "Q. Some that were in the collection," to which you answered "A. Yes, in one of those trunks that was lost there were some; I bought it full of goods from him." A. Yes, that green or blue trunk.

4551 Q. That was the trunk which you bought full of goods from Captain Phillips, was it? A. Yes.

Q. How much did you pay him for that trunk full of goods? A. I don't remember; we looked at every article, one after the other.

Q. Can't you give us any idea of what you paid him for that trunk full of goods, at one purchase? A. I don't remember; no, unless I should see those articles.

Q. Did they remain in that trunk until you shipped it? A. From the time I purchased it in 1893 up to the time it sailed.

Q. Yes. A. No.

4552 Q. What did that trunk full of goods consist of? A. Indian curios, leggings, moccasins, pipes, clubs, tomahawks, saddles; I bought two saddles at the time from him.

Q. All these goods that you bought at Pine Ridge, how did you get them from the agency to the railway station? A. This Phillips sent them to me.

Q. How were they packed? A. I don't know; when he sent them to me? In bags.

Q. More than one bag? A. Yes.

Q. How many? A. I don't remember.

Q. Half a dozen? A. I don't remember; no.

Q. You say you don't remember whether it was 4553
half a dozen or more? A. No.

Q. Were you ever in Mexico? A. Yes.

Q. Old Mexico? A. Old Mexico.

Q. The reason I ask you is because you testified at the last session (page 209) that you buried your wife in Mexico? A. Yes.

Q. Did you mean in Mexico or New Mexico? A. New Mexico.

Q. You said in Mexico at your last examination; you meant New Mexico? A. I meant New Mexico.

Q. You testified, didn't you, that you brought your child back to New York with you? A. Yes.

Q. That was not the child who was lost on the 4554
Bourgogne, was it? A. No, it was not.

Q. What was the date of the death of your first wife? A. I don't remember.

Q. What year? A. The year I was there; the year I was in New Mexico; in the fall; that I remember.

Q. That was in 1897, wasn't it? A. It may be 1896, as I stated, in the fall I know it was.

Q. You have no way of fixing the date of your first wife's death? A. No, I don't remember.

Q. How old is this other child, the one that survives?

Mr. Benedict: What materiality has the age of 4555
the child?

Mr. Haldane: I am trying to fix some dates.

The Commissioner: I can't see any bearing on this case.

Q. What was the date of your second marriage?

Objected to as immaterial.

Mr. Haldane: That is material; it goes toward the credibility of the witness.

The Commissioner: I will allow the question.

4556 Q. (Repeated.) What was the date of your second marrige? A. I don't remember.

Q. Did you make an application for a ticket for your wife and child on this boat? A. Yes.

Q. Did you tell the agent what the child's age was when you applied for the ticket?

Objected to as immaterial. Objection overruled.

A. My wife told the agent.

Q. In your presence? A. Yes.

Q. What did she tell the agent the age of the child was? A. He asked if the child was over a year; if it
4557 was, that we had to pay half a ticket.

Q. What did she say? A. Yes.

Q. That it was over a year? A. Yes, certainly.

Q. And he took that down in your presence? A. I presume so.

Q. And did he charge you half price for the child? A. Yes, because the child was too old to go with the mother; a nursing child.

Q. What is the French word for a nursing child? A. *La mere allete.*

Q. Do you know what the French word *nourrison* is? A. Yes, that is the same thing.

Q. That means a nursing child? A. Yes; that
4558 means the mother is nursing the child.

Q. Wasn't this child ticketed and shipped as a nursing child? A. Not at all.

Q. You swear to that, do you? A. Yes, I could sould swear to that.

Q. When was the child born? A. In the spring some time; in the spring, I believe.

Q. In the spring of what year? A. I don't remember; I lost he paper about that; I don't remember.

Q. At your last examination you were asked (page 225): "Q. From the time you came back from Santa Fe in 1897 until you shipped the goods

on board the *Bourgogne* how much money did you 4559
spend upon this collection?" to which you answered "A. How many thousand dollars?"; you were then asked "Q. How may thousand dollars?" and you answered "A. I don't know; many." With reference to that I want to ask you where you spent these many thousand dollars upon your collection between the time when you came back from Santa Fe in 1897 and the time when they were shipped on board the boat? A. In my house; in New York.

Q. Always in New York? A. Always in New York.

Q. When you say many thousand dollars, what do you mean? How many thousand dollars? A. I 4560
can't tell how many, unless I have my books; I know many thousand dollars I spent; how many I can't tell.

Q. What do you mean by many; will you give us a minimum or a maximum, showing what you mean by many thousand dollars? A. What I said

Q. Do you mean $20,000? A. I didn't say $20,000; I haven't got my books.

Q. Are you sure it was as much as $20,000? A. I don't know.

Q. Was it as much as $15,000? A. I don't know.

Q. Was it as much as $10,000? A. I don't know.

Q. Was it as much as $5,000? A. I don't know; 4561
I say I don't know.

Q. Was it as much as $2,000? A. I said I haven't got my books, I can't say any sum, unless I have my books, and I haven't got my books.

Q. In your opinion, according to your recollection, was it as much as $2,000? A. Certainly; more.

Q. $3,000? A. I don't know.

Q. What is your best judgment about it? A. I don't know.

Q. You have no opinion about it? A. I have no opinion about it, unless I have my books.

4562 Q. To whom did you pay these many thousands of dollars in less than a year in New York? I didn't say in less than a year.

Q. You came in the fall of 1897 and the goods were lost in July 1898; to whom did you pay many thousands of dollars in that time? A. There is an error there; there is a mistake there.

Q. What mistake is there there? A. After I came from Mexico at the time you allege, I stayed in Twenty-third street the winter and the spring—I stayed about a year in Twenty-third street, and then I went in the country; then I stayed a summer in the country; and then again I went to Washington
4563 Square.

Q. When did you come back from Santa Fe? A. I don't remember the date.

Q. What year? A. I stated before I went to Europe and I went after the World's Fair; I stayed there about twenty months, possibly, or a year and a half or two years; I came back here and went to Mexico, where I buried my wife, and then I came to Twenty-third street; and the child was a year and a half or two years.

Q. Assisting your memory by the fact that your wife died in Santa Fe, what year was it you returned from Santa Fe to New York? A. That very
4564 year.

Q. What year was that? A. I don't remember; I stated that before.

Q. How long were you in New York from the time you came back from Santa Fe, New Mexico, until the *Bourgogne* sailed? A. I was that time in New York; I don't remember the date, I stated that before.

Q. Not within the year? A. I don't, unless I figure on when I went abroad and when I came back, where I stayed.

Q. Will you do that? I want to know the exact

date, or as near the exact date, within a reasonable 4565
time, as you can give it, when you returned from Santa Fe to New York, and I don't want to go any further until I get that information. A. Very well.

Adjourned to Thursday, October 23d, at 2 o'clock.

NEW YORK, October 23, 1902.

Met pursuant to adjournment; all the parties being present as heretofore stated.

Adjourned to November 6, 1902, at 2 P. M.

4566

NEW YORK, November 6, 1902.

Met pursuant to adjournment; all the parties being present as heretofore stated.

Adjourned to November 11, 1902, at 2 P.M.

NEW YORK, November 11, 1902.

Met pursuant to adjournment; all the parties be-in present as heretofore stated.

4567

CROSS-EXAMINATION OF GEORGE DESLIONS RESUMED BY MR. HALDANE:

Q. At the last examination you stated that you had a book which you had left at home and which you would produce. Have you brought it with you? A. Yes, sir.

Q. Will you produce it?

(The book is produced.)

4568 Q. Take the book. What is that book supposed to be? A. There are some addresses of people which I have been doing some business with.

Q. Between what periods? A. This book only is a copy of the same thing, something like a copy as before *La Bourgogne*. It was a little memorandum book that was given to me and I used to have it in my pocket.

Q. When was the first entry made in that book? A. One year or two years before the *Bourgogne*.

Q. Does it contain the names of any persons of whom you purchased curios or to whom you sold curios during that period? A. It does.

4569 Q. Did you always keep that book with you? A. What do you mean—always keep it with me?

Q. In your pocket? A. At what date?

Q. During the time that you were using it? A. I don't know that I always had it; I sometimes had it.

Q. After refreshing your memory by looking at that book, will you state from what persons other than those whose names you have given you purchased any curios during the year or two prior to the sinking of the *Bourgogne?* A. (Referring to slip of paper) I purchased some goods in Coney Island before the sinking of *La Bourgogne* from a

4570 firm called the Sitting Bull Log Cabin; it was on exhibition in Coney Island during the whole summer.

Q. What summer? A. I don't know whether it was the summer before or two summers before the sinking of *La Bourgogne*. It was prior to the sinking of *La Bourgogne*.

Q. It was during the summer of 1896 or 1897; is that right? A. It was before *La Bourgogne*. I can't tell exactly when it was before, but it was before. It can be found out. This man had an exhibition; an Indian, Rain-in-the-

Face, was the chief of the band; and I 4571
went to see him many times with some Sioux Indians who were with Buffalo Bill when Buffalo Bill was in Ambrose Park in Brooklyn.

Q. This was the time when Rain-in-the-Face was being exhibited at Coney Island? A. At Coney Island, by this party, under the name of Sitting Bull Log Cabin.

Q. Rain-in-the-Face was only on exhibition there one season, wasn't he? A. As far as I know, yes.

Q. You say that was 1896 or 1897? A. I couldn't say when it was.

Q. Was it 1895? A. It was before *La Bourgogne*. I don't remember how many years before 4572

The Commissioner: Does the book have dates?

The Witness: No; there are no dates.

Q. I understand you to say that that book only covered a year or two years, at least, prior to the sinking of the *Bourgogne?* A. I did not have the book yet. I thought since that I had some business and purchased from Sitting Bull Log Cabin in Coney Island.

Q. Don't you know that that was several years, five or six years, before the sinking of the *Bourgogne*? A. No, sir; I don't think it was.

Q. Don't you think it was? A. I couldn't tell; I 4573
don't know.

Q. Who was the person from whom you purchased these goods? A. A tall, slim person was there. I don't know whether he was the boss or the owner; he was selling the Indian curios which he had there on exhibition.

Q. He wasn't an Indian; he was the person in charge of the exhibition? A. No; he was a white man.

Q. In charge of the exhibition? A. It appeared to me he was.

4574 Q. What did you buy of him? A. I bought a war shirt, I bought a shield, I bought several pictures of pictography on cloth, I bought some moccasins, I bought several pair of leggins, tobacco pouch; I purchased a lot of stuff from them, and other articles; and many other articles.

Q. You only bought one war shirt; is that right? A. I know of one; I may have bought several.

Q. Don't you know whether you bought one or several of this man? A. I know I bought one positively; I may have bought several. I cannot think of it just now; but I know I bought one; I may have bought several.

4575 Q. How much did you pay for this war shirt? A. I paid for that war-shirt $75.

Q. That you remember, do you, distinctly? A. That I remember, yes.

Q. In view of that fact, that you remember paying $75 for one war shirt to this man that was in charge of this exhibition, do you still say that you don't know whether you bought any more? A. I say I possibly bought some more; I don't know; I don't remember now; I used to go there quite often, and whenever I would see something—sometimes they would receive some new article—I would purchase it.

4576 Q. Was this war shirt that you bought of this man that had charge of this exhibition in the trunks that you shipped on the *Bourgogne?* A. Yes; I kept that war shirt.

Q. Where did you take this war shirt with you? On which of your travels? A. I took it home.

Q. Did you take it west with you to Santa Fe? A. From Coney Island I brought it here to New York.

Q. Did you take it to Santa Fe with you? A. If it was before I went, I certainly did, because I had

my trunk with me. If it was after, I did not. I 4577
don't know whether it was before I went to Santa Fe or after.

Q. You went to Santa Fe in 1896, didn't you? A. don't know; I don't remember the date.

Q. Didn't you testify at the last session that you went to Santa Fe in 1896? A. I don't remember I testified the date.

Q. Do you say now that you don't remember the date you went to Santa Fe? A. I know I went to Santa Fe, but I don't know the date.

Q. Do you know whether you took this war shirt that you bought at Coney Island to Santa Fe with you? A. If it was prior to the time I purchased it, 4578
yes; if it was not, then no.

Q. I asked you whether you know whether you took it or not? A. I don't know, as I said before.

Q. You don't know whether you had this war shirt with you when you went to Santa Fe? A. If I bought that war shirt prior to the time I went to Santa Fe, I certainly took that war shirt with me; if I bought it after I went to Santa Fe, then no; that is the best explanation I can give you.

Q. You didn't come back from Santa Fe in 1897, did you? A. I don't remember the date, I testified before.

Q. Nor the year? A. Neither can I tell you the 4579
year; the only way is to have the certificate of my wife. Then I could tell you when it was; but I haven't got that certificate, it is in Santa Fe.

Q. Do you remember testifying at the last examination that you returned from Santa Fe in the fall of 1897? A. I don't. I don't think I testified any date.

Q. Do you remember being asked about the date of the death of your first wife? A. I don't know. Probably you asked me; I don't know.

4580 Q. I read from page 265 of the minutes of the last session where you were asked as follows:

> "Q. What was the date of the death of your first wife? A. I don't remember. Q. What year? A. The year I was there; the year I was in New Mexico, in the fall; that I remember. Q. That was in 1897, wasn't it? A. It may be 1896, as I stated, in the fall I know it was."

A. Yes, I still say so. I know it was in the fall; I remember distinctly it was in the fall; that I remember.

4581 Q. Of 1896 or 1897? A. I don't know about the date; but I know it was in the fall.

Q. Of either one of those years? A. It was probably. It was in the fall. The only way to ascertain would be to send for the certificate of death.

Q. In view of that fact, don't you know whether you had this war shirt with you in Santa Fé that you bought at Coney Island? A. If I purchased it before I went to Santa Fé, I had it with me; if I purchased it afterwards, then it was not there. That is the only explanation I can give.

Q. Is that the best explanation you can give? A. That is the best explanation I can give.

4582 Q. Don't you remember whether you had with you when you went to Santa Fe more than one war shirt? A. Certainly, I had more than one war shirt.

Q. Do you remember whether you had more than one war shirt that you purchased at Coney Island? A. That I don't know.

Q. How many war shirts did you have in your collection when you returned from Santa Fe? A. Several.

Q. How many? A. I couldn't tell exactly: I now I had several.

Q. What do you mean by several? A. More than one.

Q. How many more than one? A. I don't know. 4583
Seven or eight, ten; may have had a dozen; I don't know.

Q. Anywhere from seven to a dozen? A. I don't know. I say I had more than one; that is what I call several—more than one.

Q. How many have you got on your list that you made out of the articles lost? A. Forty.

Q. Forty war shirts? A. Yes, sir.

Q. Was this one that you purchased from the man in Coney Island among those forty? A. Certainly, it must be.

Q. Did you say it must be, must have been? A. Yes. 4584

Q. Well, was it? A. Certainly it was.

Q. What was there about that war shirt that enables you to remember that it was among these goods; anything particular about it? A. Yes.

Q. What? A. It was worn by Rain-in-the-Face, and was embroidered all in porcupine.

Q. How many shields did you buy of this man at Coney Island? A. I don't remember exactly; several shields; five or six shields, probably.

Q. Were they all alike? A. Shields are generally—

Q. Were they all alike? A. They are mostly all alike unless the man puts on his autograph as a piece of pictography. 4585

Q. How many of these had on that autograph? A. I don't know.

Q. Does that make them any more valuable? A. It does, yes; I certainly would buy first the one that had a pictograph beyond the others.

Q. Did you buy these shields all at one interview or did you buy them at different times? A. Probably different times.

Q. Don't you know whether it was different times or not? A. I stated before I was in the habit of going several times a week even.

4586 Q. I don't care anything about your habit. I wish you would give me an answer. If you don't know, say so. Did you buy these shields all at one purchase or several purchases? A. No, not at one purchase; several purchases.

Q. What sort of a shield was it that you bought the first time that you bought shields of this man? A. A shield made of buffalo hide.

Q. Did it have any Indian's autograph on it? A. Some had.

Q. No; this one that you bought the first time? A. I don't know which one I bought the first time.

Q. Did you buy this shield of the same man that
4587 you bought the war shirt of? A. I did.

Q. You only bought one shield the first time that you purchased shields of him? A. I didn't say that.

Q. What do you say? A. I say that I bought several shields at different times; whether it was the first time or the second time, or the twenty-first time I don't know.

Q. Did you buy shields of him on twenty-one occasions? A. I don't know.

Q. How many times did you make purchases of him of anything? A. I don't know; several times. I have stated before.

4588 Q. Can you describe any one of these shields that you bought of this man? A. No.

Q. Can you tell what you paid for any one of them? A. No.

Q. Can you tell what you paid for all of them? A. No.

Q. How many pairs of moccasins did you buy of him? A. I don't know.

Q. How much did you pay him for them? A. I don't know.

Q. How many pairs of leggins did you buy of him? A. I don't know.

Q. How much did you pay for any of them or all 4589
of them? A. I don't know.

Q. How many tobacco pouches did you buy of him? A. I don't know.

Q. How much did you pay for any of them or all of them? A. I don't know.

Q. How many of these shields, moccasins, leggins and pouches that you purchased of this man at Coney Island were among the goods that were shipped on *La Bourgogne?* A. I don't know.

Q. Do you know if any of them were? A. They were.

Q. Which? A. The one I mentioned before.

Q. Which? A. War shirt, shield, leggins, war 4590
bonnet, tobacco pouch, moccasins, etc., other trinkets.

Q. How many of them, I asked you? A. I don't know.

Q. Do you know how many of these shields were in your packages when they were shipped? A. Yes.

Q. If you know that some of them were in the packages, how is it you don't know which ones? A. I don't know.

Q. Then how do you know that any of them were? A. Because I remember there were some of those articles that I bought in my collection. I kept them for the collection. 4591

Q. Is that the best answer you can give? A. Yes.

Q. And the same answer applies to the moccasins and leggins and the pouches, does it? A. Yes.

Q. And you answer the same way; is that right? A. Yes.

Q. What was the total amount of your purchases from this man, everything included, war shirts, shields and everything else? A. I don't remember.

Q. If you don't remember the exact amount, do you remember in the neighborhood of what the amount was? A. $1,200 or $1,500.

4592 Q. Is that the best answer you can give to that? A. Yes.

Q. Have you any means of refreshing your memory as to the date of that exhibition at Coney Island? A. No.

Q. Is there anything in that book which you have produced which shows anything about that? A. Not to my knowledge. (Examining book) No.

Q. When did you first remember that you had made these purchases from this man at Coney Island? A. When I put the name here on this paper.

Q. Was that since the last session? A. Since the
4593 last session.

Q. What brought it to your remembrance? A. After you asked me who I purchased it from I thought of it.

Q. At the last session you gave all the names you could remember, did you not, of persons from whom you made that purchase? A. Yes.

Q. And you thought of this man since that time; is that right? A. Probably.

Q. Is that so? A. I presume so.

Q. Don't you know? A. I don't know, no; I presume so.

Q. You don't know whether you thought of it
4594 since the last session? A. I presume so.

Q. I that the best answer you can give to that? A. It is.

Q. Have you thought of any other persons of whom you purchased curios since the last session? A. Yes.

Q. Other than those whose names are in that book? A. Yes.

Q. Who? A. (Referring to slip of paper.) Mr. Van Deusen.

Q. Where did he live? A. Lexington avenue.

Q. What number? What part of Lexington avenue? A. That I don't remember.

Q. Near what street? A. He was working on the 4595
Outing, he was an artist in *Outing*, Fifth avenue, between Twenty-seventh and Twentieth streets; somewhere in that neighborhood.

Q. Is that where you saw him? A. Many times.

Q. Did you see him any other place except that? A. At his house.

Q. Where was his house? A. I stated before; Lexington avenue.

Q. Near what street? A. Sixty some street; I couldn't tell.

Q. Which side of the avenue, east or west? A. It may have been between Fifty-ninth and Sixtieth streets; I believe I went off the car at Fifty-ninth 4596
street; on the east side.

Q. What year was that? A. That I don't know. Before *La Bourgogne*.

Q. Was it before you went to Santa Fe the second time? A. I don't know. I have known him for several years; I have known him for many years.

Q. Do you know whether you purchased these goods of Mr. Van Deusen before you went to New Mexico or after you came back? A. I can't tell; I purchased some before, probably, and some after also, I know.

Q. Leaving out the probably, do you know? A. I don't.

4597

Q. What did you buy of Mr. Van Deusen? A. Some masks.

Q. What sort of masks? A. Wooden masks; Indian masks.

Q. Do you know what tribe of Indians they were made by? A. Yes.

Q. What? A. Those masks belonged to Deerfoot, the tribe near Buffalo; I forget the name of that tribe.

Q. You mean Deerfoot, the running tribe? A. Yes. Some of those belonged to him.

4598 Q. Did you buy anything besides masks of Van Deusen? A. Rattles.

Q. What else? A. Other Indian trinkets. There were many things which I bought from him—masks and rattles.

Q. Did you buy these masks of him all at one time or at different times? A. At different times.

Q. And the same with the rattles, at different times? A. A mask is generally accompanied with a rattle.

Q. The same with the rattles. Did you buy the rattles all at one time or different times? A. At different times.

4599 Q. How may masks did you buy of Mr. Van Deusen? A. Twenty, fifteen or twenty, or twenty-five.

Q. Which? A. May be thirty.

Q. Is that the best answer you can give to that? A. Yes, that is the best answer I can give.

Q. How much did you pay for all of them? A. I don't know.

Q. How many rattles did you buy of him? A. As many as I bought masks.

Q. Do you mean there was a rattle went with each mask? A. I mean so.

Q. How much did you pay him for the rattles? A. I don't know.

4600 Q. How much did you pay him for the other trinkets you bought of him? A. I don't know.

Q. Were these masks, rattles and trinkets in the packages that were shipped? A. I don't know if the trinkets were there; but the masks, the best ones, were there.

Q. Did you pack these masks for shipment? A. Certainly.

Q. How many of them were there? A. A dozen, I guess.

Q. In the package, you mean? A. Yes.

Q. How many? A. A dozen, the best ones; maybe some others.

Q. Do you mean a dozen or about a dozen? A. A 4601
dozen.

Q. Just exactly a dozen? A. Yes.

Q. You counted them, did you? A. No.

Q. Then how did you know there was just a dozen? A. Because I know I had that much.

Q. Might there have been eleven or thirteen? A. I don't know.

Q. In fact you don't know how many there were, do you? A. I say a dozen.

Q. I know you say so, but you don't know. A. You asked me if I counted them; I could have counted them before I put them in the trunk and know how many I had in my collection, without 4602
counting them when I put them in the trunk.

Q. You remember that you had just an even dozen left, do you? A. Yes.

Q. How about the rattles? A. As many—there should be one to accompany each mask.

Q. How long had you had these masks and rattles before you shipped them? A. Some, some years.

Q. Is that the best answer you can give to that? A. Yes.

Q. You can't make it any more definite? A. No.

Q. Give us the name and address of some other person that you have remembered since the last session of whom you purchased any curios? A. I 4603
bought some in the Knickerbocker Auction Rooms, Smith Auction Room.

Q. Address? A. Twenty-eighth street.

Q. East or west? A. Between Broadway and Fifth avenue.

Q. What year was that in? A. Before *La Bourgogne*. I don't know.

Q. Do you know whether it was before you went to New Mexico or after you returned? A. I don't don't know; after, probably.

Q. Did you make more than one purchase there? A. Yes.

4604 Q. How many purchases did you make there? A. I don't know. Whenever he had some Indian curios he notified me and I went and bought whatever suited me.

Q. Did he notify you in writing? A. He did; he did sometimes.

Q. Did you buy these articles of the Knickerbocker Auction Room at public auction or at private sale? A. Public auction, generally.

Q. Always? A. Generally.

Q. Not when he notified you that he had something for sale? A. He notified everybody.

Q. What did you buy there? A. Indian curios.

4605 Q. What? A. Indian and Alaska curios; what I don't remember.

Q. Don't you remember any articles you purchased there? A. No.

Q. Nor what you paid for them? A. No.

Q. Nor whether they were in these trunks or not when they were shipped? A. They were in the trunks.

Q. How do you know that the articles that you purchased in the Knickerbocker Auction Rooms were in these trunks if you don't remember what you bought? A. Because I didn't leave them in the room; I put them in the trunks.

4606 Q. What was the total amount of your purchase at the Knickerbocker Auction Room? A. I don't know.

Q. Have you thought of the name of any other person? A. Fifth Avenue Auction Room.

Q. Where is that? A. Fifth avenue and Twenty-seventh street.

Q. In what year or what years did you purchase any curios there? A. Some years before *La Bourgogne*.

Q. Before you went to Santa Fe or after you came back? A. May be so before and may be so also after, probably.

Q. Don't you know which? A. I don't 4607

Q. How many times did you buy curios? A. I didn't count them.

Q. Don't you know? A. No.

Q. What did you buy there? A. Indian curios.

Q. What kind of articles? A. Any kind.

Q. Describe any that you bought there? A. Anything; I bought some war shirts there.

Q. More war shirts? A. Yes.

Q. How may did you buy at the Fifth Avenue Auction Room? A. One or two; at one time I bought one or two or three, probably.

Q. How much did you pay for them? A. I don't remember. 4608

Q. Do you know what you were accustomed to pay for war shirts? A. I know the value if I see a war shirt.

Q. You remember paying $75 at Coney Island for that war shirt? A. Yes.

Q. Don't you remember what you paid for the one at the Fifth Avenue Auction Rooms? A. No.

Q. Didn't you get a bill for them? A. Probably.

Q. Don't you know whether you had or not? A. Certainly I had a bill.

Q. Don't you know what was on that bill? A. Article that I purchased.

Q. What did you do with those war shirts that you bought at the Fifth Avenue Auction Room? 4609
A. I don't know what I did with them; kept them, or sold them.

Q. You don't know which? A. No.

Q. Were they among the goods that were shipped on *La Bourgogne?* A. If I didn't sell them, probably.

Q. Do you know whether they were or not? A. I don't remember.

Q. Describe those war shirts that you bought at the Fifth Avenue Auction Rooms? A. Pigskin, long fringe.

4610 Q. Were they decorated or ornamented? A. I don't remember any more.

Q. Don't you remember whether they were plain or ornamental? A. I remember one was plain and some beadwork on, but I don't remember; it is too long.

Q. How long ago is that since you bought those war shirts at the Fifth Avenue Auction Rooms? A. It was some yeas before *La Bourgogne*, and it is four years since *La Bourgogne* sunk.

Q. How many years is that since you bought those? A. Before *La Bourgogne* went to the bottom of the sea.

4611 Q. Is the Fifth Avenue Auction Room still runnig? A. I guess it is.

Q. Have you made any effort to get any information from them as to these purchases? A. What for.

Q. Have you made any effort to get any information from the Fifth Avenue Auction Room as to your purchases of war shirts there for the purpose of testifying on this claim? A. I don't see why I should make any.

Q. Have you or have you not? A. No.

Q. What else did you buy at the Fifth Avenue Auction Room besides war shirts? A. Anything

4612 there was there in Indian curio.

Q. Describe it? A. I don't remember what I bought—anything there was, shirt shield, tobacco pouch, or anything there was there.

Q. And that is the best answer you can give to that question, is it? A. It is, yes.

Q. Do you know whether any of the articles you purchased at the Fifth Avenue Auction Rooms were in these packages that were shipped on the *Bourgogne?* A. I stated before to that effect.

Q. To what effect? A. That is the same question you put me before.

Q. As to the other things. Not as to these things? A. If I didn't sell them, if I kept them for my collection, they were; I may have kept that. 4613

Q. Do you know whether they were or were not? A. Probably.

Q. I still have to ask you whether you know or not? A. I can't tell yes or no, because I don't know.

Q. Have you thought of any other person or persons from whom you purchased any curios? A. Keys Auction Room, Twenty-eighth street, between Broadway and Fifth avenue.

Q. What year was that? A. I don't know. 4614

Q. Do you know whether it was before you went to New Mexico or after you came back? A. I don't know.

Q. How many times did you purchase articles there? A. I didn't count them.

Q. Do you know how many times now? A. I didn't count them.

Q. What did you buy there? A. Anything he had in Indian curios; in fact in curios; I bought some South Sea Island curios; also I bought some Alaska curios; I bought anything he had in curios.

Q. What was it that you bought? A. Curios.

Q. What kind of curios? A. I stated. 4615

By the Commissioner:

Q. Do you know or do you not the articles he asks for? A. I don't know specially what articles.

Q. Then say you don't know. A. I don't know.

By Mr. Haldane:

Q. When was the last time you purchased anything there? A. I didn't take any note.

Q. Do you know whether anything you pur-

4616 chased there was in these packages that were shipped? A. Yes.

Q. What A. Some South Sea Island lances and clubs and masks and carved idols and images.

Q. I thought you said a few moments ago you didn't know what you bought there; didn't you? A. I didn't say that. I stated that I bought South Sea Island and Indian curios, etc.

Q. What were these South Sea Island curios? A. Lances, etc.

Q. How many of these lances did you buy there? A. I don't know.

Q. How many of the images? A. I don't know.

4617 Q. How many of the clubs? A. I don't know.

Q. What did you pay for them? A. I don't know.

Q. Which of these were in the packages that were shipped; the lances or the images or clubs? Probably all of them.

Q. Do you know? A. I know there were some.

Q. How many of each? A. I didn't count them.

Q. You don't know, then; is that right? A. I didn't count them.

Q. Do you know or do you not? A. How many? No, I didn't count them.

Q. Is there any other person of whom you purchased any of these curios? A. Many others.

4618 Q. Whose names you haven't heretofore given us? A. Farmers' Mercantile Company, Rushville, Nebraska.

Q. Did you purchase from that company in Rushville or did you have the goods sent to you here? A. Sent here.

Q. Your purchases from them were made by correspondence, were they? A. Yes.

Q. Did you receive any invoices of the goods? A. Yes.

Q. How were they sent to you; by express? A. Yes, by express.

Q. How many times did you purchase of them? 4619
A. I didn't count them.

Q. Do you know how may times? A. No.

Q. When did you begin to deal with them? A. Some years before the sinking of *La Bourgogne*.

Q. What year? A. I don't know.

Q. Do you know whether it was before you went to New Mexico or after you came back? A. After I came back.

Q. When did you come back? A. I don't remember the date.

Q. What was the first purchase you made of them? A. I don't remember.

Q. Do you remember what you purchased at any 4620
one time from them? A. Yes.

Q. What was it? A. Bow, quiver, arrow, shield, war shirt, leggins, tobacco pouch, moccasins; all kinds of Indian trinkets; anything they could sell me. That was the understanding—send me everything you have.

Q. You remember purchasing some of each of those articles that you have enumerated? A. Yes, some of each of those articles.

Q. Of each of those kinds that you have enumerated? A. Yes.

Q. Do you remember how may of any one of those kinds of articles you purchased? A. No.

Q. Do you remember what you paid for any of 4621
them? A. No.

Q. Do you know what you did with them after you got them? A. Sold some; kept the best of them for my collection.

Q. How many did you sell and how many did you keep? A. I don't don't know; it was in my books; the books were on board the *Bourgogne*.

Q. How many of them were in these packages that were shipped? A. I don't know.

Q. Do you know whether any were? A. Certainly.

4622 Q. If you know some of them were in there, why don't you know how may? A. I don't know.

Q. When was the last time that you made any purchase of the Rushville Farmers' Mercantile Company? A. A few days before the sailing of *La Bourgogne;* may be three or four days or a week.

Q. Was that an express package that came from them? A. Yes.

Q. How much was there to pay on it? A. I don't remember.

Q. Haven't you any idea now how much it was? A. Haven't the slightest idea.

4623 Q. Can't tell whether it was $20 or $200? A. No.

Q. What was in the package? A. Indian curios.

Q. What kind of curios? A. All kinds of Indian curios.

Q. Is that the best answer you can give to that? A. Yes.

Q. Did you open the express package in your Washington square residence? A. I did.

Q. A few days before the *Bourgogne* sailed? A. May be five or six days; may be a week; just shortly before I sailed.

Q. Did this express package come before you
4624 bought those goods of that man that came around to Washington Square with some goods or after? A. I don't know.

Q. You remember testifying that a man came around with a package and you bought all he had? A. Yes.

Q. Don't you know whether this express package came before you purchased those goods of that man or after? A. No.

Q. Is that all the information you can give us with respect to that portion of your collection which you claim to have purchased of the Farmers' Mercantile Company? A. Yes.

Q. Give us the name of some other person from whom you purchased part of these goods? A. George Krager, Park Avenue Hotel. 4625

Q. Who was he? A. He was attached to some reservation; I believe the Sioux Reservation. He at one time also travelled with Buffalo Bill.

Q. Did he have a collection? A. I don't know.

Q. Where did you purchase things of him? A. He brought them to my house.

Q. Where were you living then? A. Fourth avenue.

Q. What number? A. I stated before; I don't remember.

Q. Whereabouts on Fourth avenue? A. It was near Fourteenth street. 4626

Q. How many times did he bring articles to your rooms? A. I don't know.

Q. What were the articles he brought to your house? A. Indian curios.

Q. What? A. Anything in Indian curios.

Q. Is that the best answer you can give to that? A. Yes.

Q. How much did you pay him for any or all of them? A. I don't know.

Q. Were any or all of them in the packages that were shipped on the *Bourgogne?* A. Probably.

Q. Is that the best answer you can give to that? A. Yes. 4627

Q. Do you know where this man is now? A. No.

Q. When was the last time you saw him? A. I don't know.

Q. Where was the last time that you saw him? A. I don't remember; New York.

Q. Have you got the name of any other person from whom you purchased any part of this collection? A. Mr. Ehlers, 63 Market street, Newark, N. J.

4628 Q. When did you buy anything of him? A. I don't know.

Q. What was his business? A. I don't recollect; he had a store.

Q. What sort of a store? A. I don't know.

Q. Don't you know whether it was a butcher shop or a dry goods store? A. It was no butcher shop.

Q. Was it a dry goods store? A. Probably hats, I think

Q. Was he a collector? A. He used to buy and sell.

Q. Is he there yet? A. I don't know.

Q. Have you made any effort to find out whether
4629 he is there yet? A. No.

Q. What did you buy of him? A. Indian curios.

Q. Is that the best answer you can give to that? A. Yes.

Q. How much in value did you buy of him? A. I don't know, as I stated many times before, unless I had my books, which are on the bottom of the sea, I can't tell the number.

Q. Were any of them in the packages that were shipped on this boat? A. I don't know; probably.

Q. I will ask you generally to give us the name of any person from whom you purchased any part of your collectin which was in these packages that
4630 were shipped on the *Bourgogne?* A. Finley, Shedley Building, Kansas City, Missouri.

Q. What was his business? A. I don't know.

Q. Were you there? A. I was there.

Q. Did you go to his place of business? A. No. Yes, I went to his place of business.

Q. What was his business? A. It was in a bank where he was.

Q. Was he an officer in the bank or a clerk in the bank, or what? A. I don't know; I asked for Mr. Finley.

Q. Did you do business with him in the bank? A. No.

Q. Where did you do your business with him? 4631
A. By correspondence.

Q. What articles that you purchased of this man in Kansas City were in any of these packages that were shipped on this boat? A. Yes, they were.

Q. What articles?

Objected to; the witness has said time and time again that he cannot tell without his books. Allowed.

Mr. Haldane: If the witness will say now that he can't say what article he purchased from any person whose name he can give us was in these packages, I will be content with it. 4632

The Witness: In a general way Indian curios; but what they were or how much I paid then—who is the business man that would be able to answer those questions?

Q. With reference to this man at Kansas City; what articles that you purchased of him were shipped on the *Bourgogne?* A. I don't know.

Q. Do you make the same answer as to every other person from whom you purchased goods? A. Yes.

Q. In the four years that have elapsed since the *Bourgogne* was lost, what efforts have you made to obtain any data or information from any person of 4633
whom you purchased goods, to enable you to testify upon the trial of this claim? A. I didn't see any purpose for me to do it.

Q. What efforts have you made? A. None.

Q. Have any of these Indians from whom you have been accustomed to purchase articles for many years been in New York since 1898? A. Since the sinking of La Bourgogne?

Q. Yes? A. Yes.

Q. Why didn't you endeavor to prove by them

4634 what you purchased from them, if you didn't know yourself?

Objected to.

A. How would I have been able to prove by them, how bring them here in court?

Q. Why didn't you make some effort to ascertain from them the kind and quality and value of your purchases? A. It is absolutely ridiculous.

Q. You know that you purchased $3,000 worth of goods at one time of these Indians in 1898, don't you? A. Which Indian are you referring to?

Q. The Indians with whom you had made ar-
4635 rangements to send you curios whenever they had any, as you have testified to at one of the former sessions? A. That I bought those goods in my house in Washington Square, do you mean? I have bought from many.

Q. Didn't you buy $3,000 worth of these Indians at one purchase in 1898? A. In Washington Square?

Q. In 1898, in one purchase? A. Yes.

Q. Why haven't you made some effort to identify the goods that you purchased of those Indians in 1898 by the Indians themselves, if you can't remember? A. When you talk about identifying
4636 goods, the goods must be there to identify. You can't identify them on the bottom of the sea.

Q. Is that the best answer you can give to that? A. It is.

Q. Do you remember being asked at your last examination how much money you had spent all together in increasing your collection from the time you came back from Sante Fe until the ship was lost? Do you remember being asked that? A. Probably.

Q. Do you remember swearing that during that whole time you didn't know whether you had spent

more than $3,000? A. I don't remember that I said 4637
that, no; because I certainly spent considerably more than that; I said that I could not tell unless I had my book; that is what I said.

Q. You first of all answered, did you not, that you had spent many thousand dollars? A. Many thousand dollars.

Q. After your return from Sante Fe in 1897? A. Yes.

Q. And before the ship went down, in increasing your collection? A. Yes; I didn't say 1897; I said when I returned from Sante Fe.

Q. Then you remembered being asked whether it was $15,000 or $10,000 or $5,000, and you finally 4638
said that you didn't know whether it was as much as $3,000? A. Will you show me the minute where I say that?

Q. You don't remember that? A. No, I don't remember; because I certainly did not say such a thing

Q. With reference to that inquiry you were asked as follows, on page 268:

"Q. In your opinion, according to your "recollection was it as much as $2,000? A. "Certainly; more.

"Q. $3,000? A. I don't know.

"Q. What is your best judgment about it? 4639
"A. I don't know."

Do you remember testifying that? A. I say I don't know. I say I couldn't tell unless I had the book before me. I still say so.

Q. And at the same time, although you can't tell whether you spent $3,000 all together after your return from Sante Fe, and before the ship was lost? A. Whether I spent $3,000?

Q. You still say that you bought $3,000 all together at one purchase? A. I say I bought consid-

4640 erably more than that; how much I can't tell; I have no book before me. I still say so.

Q. Just before we adjourned at the last session, you were asked as follows with reference to your trip to Sante Fe, page 268:

"Q. You came in the fall of 1897 and the "goods were lost in July, 1898. To whom "did you pay many thousands of dollars in "that time? A. There is an error there; "There is a mistake there."

What is that mistake?

Objected to; the following question in the
4641 minutes is "What mistake is there?"

Q. You were then asked, "What mistake is there?" and said:

"After I came from Mexico at the time you allege I stayed in Twenty-third street the winter and the spring; I stayed about a year in Twenty-third street, and then I went in the country; then I stayed a summer in the country, and then again I went to Washinton Square?" You remember answering that?

A. Yes, sir.

4642 Q. Now I want to know from you, after your having this opportunity to refresh your memory, when did you come back from Sante Fe? A. I don't know the date.

Q. What year? A. I don't know that, neither.

Q. You remember being asked also just before we adjourned at the last session: "What was the date of your wife's death at Sante Fe?" A. I don't know; I have to send for a certificate; otherwise I don't remember.

Q. Don't you remember what year your wife

died? A. No, I don't; I was asked that same ques- 4643
tion only a few days ago by a priest here in regard to my child being in the convent, and I couldn't tell.

Q. Don't you remember being told the very last question before adjournment at the last session that we wanted to know the date of your wife's death? A. I sent for the certificate of death.

Q. You have sent for it? A. Yes.

Q. When did you send? A. I sent last week.

Q. How long after your wife's death in Santa Fe was it that you were married to your second wife, for whose death you have sued the French Steamship Company? A. Months after. 4644

Q. How many months? A. Half a year probably.

Q. Did you say "probably?" A. I say probably; because the only thing that I have to remember was that my child was in board at One Hundred and Sixth street, that while the child has been there five or six months—and this was shortly after that—that lady didn't want the child any more there; she was getting too old, and she didn't want the child any more, and I had to take the child back; and I got married at that time.

Q. Where were you living at the time of your second marriage? A. Twenty-third street. 4645

Q. What number? A. I don't remember; that was 160 something; I forget.

Q. In the same house that you have testified to before? A. The same place, yes.

Q. What month were you married in? A. I don't remember. That was in the spring.

Q. Were you married in New York City? A. Yes.

Q. By whom? A. Before the witness and signed by a notary public.

Q. What do you mean? A contract of marriage? A. Yes.

4646 Q. You were not married by a clergyman? A. Not married by a clergyman, no.

Q. Nor by any person authorized to solemnize marriages? A. We signed a certificate of marriage on the Bible before four witneses; probably more party were there; and we had the ceremony legalized by a notary public.

Q. Who were the witnesses? A. One was a gentleman who was chef in the Waldorf-Astoria, Mr. Tenu.

Q. Is he still there? A. No; he isn't there any more; he died last summer; he died in last July or August.

4647 Q. What has been your business since the *Bourgogne* was lost? A. I sold some paintings, different buying and selling some paintings, and I am being a private detective; I work for John McCullagh, the Committee of Fifteen; Charley Heidelberg.

Q. Have you any other business besides the detective business? A. Now, you mean?

Q. Yes? A. I am with the S. P. C.

Q. The American Society for the Prevention of Cruelty to Animals? A. Yes.

Q. Where is their place? A. Twenty-sixth street and Madison avenue.

Q. Is that where you have your headquarters?

4648 A. Yes.

Q. Have you had any communication with your father or your aunt since the loss of the *Bourgogne?* A. My aunt.

Q. Have you received any financial assistance from them since that time? A. From my aunt?

Q. Yes? A. Yes.

Q. She is the same aunt that you say gave you $10,000 when you first came to this country, is she? A. Yes.

Q. You said that in 1892 when you went to Pine Ridge you had about $2,000, and you stated that

you got it by speculating in curios, did you not? 4649
A. Yes.

Q. How long had you been in this country then? A. All together?

Q. In 1892, how long had you been here? A. Four years, I guess.

Q. Had you spent all that $10,000 that your aunt gave you?

Objected to as immaterial, irrelevant and incompetent.

Allowed. Counsel for claimant excepts.

A. Did I say $10,000 or 10,000 francs?

Q. Francs you said. At the time that you went 4650
to Pine Ridge in 1892 and had $2,000 with you which you had made by speculating in curios, had you spent the 10,000 francs that your aunt gave you? A. No, I don't suppose so. I don't remember, but I don't suppose so.

Q. Did you have that money laid by in addition to this $2,000 that you made in speculating in curios? A. Probably.

Q. Don't you know whether you had or not? A. I don't remember; I know I had some.

Q. Did you leave any money behind you in Philadelphia when you started for Pine Ridge? A. I don't remember. Certainly I left some to my wife if I went away. 4651

Q. Did you have any money in any bank in Philadelphia at that time? A. No.

Q. Did you ever have any money in any bank? A. Not that I know.

Q. How much money did you leave with your wife in Philadelphia when you started for Pine Ridge? A. I don't remember.

Q. Was the $2,000 that you had with you, as you testified, when you went to Pine Ridge all the money you had except what you had left with your wife

4652 for her maintenance while you were gone? A. I don't know; I don't remember.

Q. When did you go to Deadwood? A. I don't remember.

Q. You remember being there, don't you? A. Yes.

Q. Was it on the same trip that you went to Pine Ridge? A. Probably.

Q. Don't you know? A. No.

Q. Did you go to Deadwood before you went to Santa Fe or afterwards? A. That wasn't on that trip that I went to Santa Fe.

Q. Did you go to Deadwood before you went to
4653 Santa Fe or afterwards? A. I don't know.

Q. Don't you know whether you went to Deadwood in 1892 or 1897? A. I don't remember.

Q. Did you see Mr. Stillwell at Deadwood when you were there? A. Probably; I don't remember.

Q. What is the extent of your acquaintance with that man Stillwell of Deadwood? A. The business I done with him was more by correspondence.

Q. When you were in Deadwood, didn't you see him? A. I don't remember.

Q. Where were you living at the time that you received any letters or correspondence from Mr. Stillwell? A. I don't remember.

4654 Q. Do you remember testifying about that at the session of October 13th last? A. No.

Q. If you remembered then where you were living at the time you received letters from Stillwell, have you forgotten in the meantime? A. I don't know.

Q. Have you refreshed your memory as to the place for which you took a ticket for your wife and child on the *Bourgogne?* A. I testified already to that.

Q. You testified you didn't know. Now, I want to know if you have refreshed your memory about that? A. No; I don't know.

Q. Will you swear that your wife wasn't ticketed 4655
to Basle? A. No; because I believe she was. The ticket was bought to Paris, and extended to Basle.

Q. Is that your recollection? A. Yes.

Q. You have testified about paying for a ticket, and also about these packages being sent by freight. Was that all paid for at once, or did you make two payments. Did you pay at one place for the ticket and at another place for the freight? A. The trunks had nothing to do with the ticket. I said that before.

Q. That is the reason I ask you. It doesn't seem to be quite clear. Did you pay freight on the packages separate from the passage money? A. Yes. 4656

Q. What were the circumstances under which you left or gave up your residence in Washington Square? A. Because I didn't want to stay there any longer; I was going abroad.

Q. Were you in arrears for rent at that time? A. I was not in arrears for rent; no.

Q. Did you sleep there the night before the boat sailed? A. I don't remember.

Q. Did you sleep there the night before that? A. I don't remember.

Q. Did you sleep there on the 3d night before the boat sailed? A. I don't remember.

Q. Do you remember anything happening to you 4657
in connection with that flat on the 27th of June? A. No. I don't know what you mean.

Q. You don't remember anything happening, do you? A. Nothing.

Q. Your landlord's name was Marquette, wasn't it? A. Yes.

Q. Did he sue you for rent or for the possession of the flat? A. It was understood that Marquette should make certain repairs in the house, to put an iron in front of the chimney, for which I paid; it was understood that he should make certain repairs

4658 which he didn't want to make, which I had to make, and I wanted him to pay; he didn't want to pay. I retained the last month's rent, and that accounts for the reason——

Q. Then what did he do? A. I don't remember what he did.

Q. Don't you remember being served with any paper? A. I don't remember; may be he did; I think he did.

Q. Do you remember the marshal coming around to your premises with papers to remove you? A. I wasn't there if he came; may be he came; I don't know.

4659 Q. Did he remove anything from the premises? A. Nothing at all.

Q. And your household furniture and goods were in that flat up to the day before the boat sailed, were they? A. Yes.

Q. In the flat which you had been occupying? A. Yes. We sold the furniture.

Q. Did Mr. Marquette get a judgment against you for the rent? A. I don't know what he had.

Q. You were sued, weren't you? A. I don't know; I wasn't in Court. I don't know if he had a judgment or what.

Q. He didn't have any judgment unless you were
4660 sued. Do you mean to say you don't know whether the papers were served on you? A. Exactly. I mean to say what I say.

Q. If there is a judgment against you for the rent of that flat, is this the first you have heard of it? A. I don't know anything about it.

Q. Is this the first you have heard of it? A. Yes.

Q. What was the rent of that flat for a month? A. $27 or $25, I believe.

Q. And you kept this $100,000 collection in that flat or in the cellar? A. Exactly.

Q. How much insurance did you have on it? A. I had no insurance.

Q. Did you ever have any insurance on it? A. 4661
No. I was to have it insured and when we decided that we were going—I even made an item about the insurance?

Q. Did you ever have any insurance, I ask you, on it? A. No.

Q. All these years? A. No.

Q. What other property did you own except your collection? A. What you mean? Furniture?

Q. What other property? A. Besides Indian curios?

Q. Aside from the goods that were in these packages that were shipped, what other property did you own? A. Furniture. 4662

Q. Household furniture? A. Yes.

Q. How much was that worth? A. I don't know.

Q. What became of it? A. Sold it when we went away.

Q. What did you get for it? A. I don't remember.

Q. Can't you remember within a hundred dollars what you got for it? A. No; because I was too busy.

Q. Did you get $100 for it? A. I don't think so.

Q. Then how much did you get? A. I don't remember.

Q. Did you get $50 for it? A. I don't remember. 4663
I didn't sell it; I was out when the man came and bought the goods.

Q. How much cash did you have at the time the *Bourgogne* sailed? A. How much I had in my pocket?

Q. Anywhere; how much in money? A. A few thousand dollars.

Q. How many thousand dollars? A. A couple of thousand.

Q. Exactly? A. Something like that.

Q. Is that the nearest you can tell us as to how much you had? A. Yes.

4664 Q. Where had you kept this $2,000 prior to the time that your wife sailed? A. Home.

Q. In your clothes? A. Home; in my bureau.

Q. Did you keep it in your clothes? A. In my bureau.

Q. When did you count it last before your wife sailed? A. I don't know when I counted it last. We know what we had we needn't count it every five minutes.

Q. How much money did you give your wife when she left? A. My wife had several hundred dollars in her satchel.

Q. How much? A. I don't know.

4665 Q. Didn't you and she talk about how much money she was taking and how much she was leaving for you? A. I don't remember.

Q. Did she take the several hundred dollars that she had out of the other money that was in the bureau? A. She could do so if she wanted; I don't know.

Q. Did she? A. She was the boss as well as I; she could do what she wanted.

Q. How many days before you removed from Washington Square was it that you took this money out of the bureau? A. I suppose before we sold this furniture; when we packed the trunks.

4666 Q. How many days? A. I don't know.

Q. Did you count it when you took it out? A. I don't remember.

Q. Then why do you say that you had about $2,000? A. Because I counted it before.

Q. When did you count it? A. I don't know.

Q. How many weeks or months before the *Bourgogne* sailed? A. I don't know.

Q. Whatever the amount was, $2,000, more or less, what was that the result of? Where did you get that money? A. I suppose I was speculating; I was buying and selling articles.

Q. Supposing that you were, do you mean to be 4667
understood that is where you made it; in speculating in curios? A. Probably.

Q. Don't you know? A. I do.

Q. Why don't you answer yes or no then? A. Yes.

Q. At the first session that we had here you had a list which you made out of the articles which were in those packages that were shipped. Have you any objection to my using that list for the purpose of cross-examining you? A. I leave it to my counsel.

Q. No; I ask you, have you any objection to my using that list for the purpose of cross-examining you? A. I wish to consult Mr. Benedict about it. 4668

Mr. Haldane: I think I am entitled to an answer.

Mr. Benedict: I will answer for him. No, we haven't any objection. I produce it for you. (Handing counsel Petitioner's Exhibit 1 for Identification.)

Q. I want to ask, if this collection was worth $100,00, why did you only claim $50,000? A. I may say it is worth $200,000. There were some articles that you couldn't purchase at any price.

Q. (Repeated.) A. I don't know.

Q. Who fixed the amount that you should sue for? A. I don't remember if anybody fixed the amount. 4669

Q. Did you fix it? A. Probably I did, yes.

Q. When? A. After I had this accident.

Q. Had you already figured out that your collection was worth $50,000 before you consulted about it? A. Yes; I know I had over $50,000 before I consulted counsel, because I made an estimation to have it insured before.

Q. When? A. On two occasions; before the sinking of *La Bourgogne*, and some time before.

Q. To whom did you make application for insur-

4670 ance? A. I made no application. There was a gentleman in the insurance business that came and see me; he was a friend.

Q. What company did he represent? A. I couldn't tell you, but I could trace it.

Q. What is his name? A. Neither do I remember.

Q. Where was his office? A. I don't remember neither; I remember he gave me his card, but I don't remember; he had a German name, or a Jewish name.

Q. Did you show him the collection? A. Yes, I showed him the collection. He asked me what I thought.

4671 Q. How many years ago was that? A. That was before the sailing of *La Bourgogne;* I was advised to have it insured.

Q. Just before the boat sailed? A. A short time before.

Q. How long before the *Bourgogne* sailed was it that you made up your mind to send the goods abroad? A. I understood that if I was going abroad with my wife, that I take my collection with me always; I don't know; we were talking about going abroad may be a month before.

Q. What was the object of your going abroad? A. My wife wanted to visit her folks; I wanted also to visit my folks and my family.

4672 Q. Was that all; was that the only object? A. That was one object. I intended to take a trip in Europe, exhibiting my collection probably. But my first idea was to go and see my family, my aunt.

Q. How many Indian photographs were there in these trunks that were shipped? A. 500 or 600.

Q. Did you count them when you packed them? A. I know before that I had them.

Q. Did you count them when you packed them? A. I counted them before; I made an estimation before; no, not when I packed them.

Q. How long before they were packed was it that 4673
you counted them the last time? A. I want to make some explanation to that. That same question, did you count them when you put them in your trunks —I had a list of everything that I had there in my rooms and of those things I had there and I put them in my trunk; I know perfectly well what was there in the house; I know what I had. I had a list of it, when I made that list, in order to have it insured; I know that I had so many collection, and how much they were worth.

Q. Where is that list? A. I have made the list here in the book before to see how much it would represent for the insurance business. 4674

Q. In that same book that you produced a little while ago? A. Yes, in that same book I produced; in the back of the book.

Q. When was that list made in the back of the book? A. It was made may be a week or two weeks, or a month before; I forget; when that insurance man came and wanted to know how much it was worth.

Q. And that contains a list of your entire collection, does it? A. No; we concluded that it would be insured for $50,000.

Q. You have had that list with you ever since, have you? A. Ever since? I don't know what you 4675
mean by "ever since?" It was in my house; but I didn't know that book was in my house until lately.

Q. When did you discover that you had that list? A. Lately; after you asked me those questions.

Q. Where has that book been all the time since the *Bourgogne* went down? A. It was in my house, in my trunk.

Q. When did you see it last before this last time when you found it? A. That I don't remember.

Q. Have you seen it since the ship went down? A. Yes; I saw it since the *Bourgogne* went down.

Q. You knew where it was all the time, didn't

4676 you? A. No, I didn't; I didn't pay no attention; I didn't remember that book had any list in it even until lately when you questioned me; then I thought of that book. You are the cause that I hunted for that book.

Q. At the time that you made out a list of the articles that you had lost for the use of your counsel in preparing this claim, where was that book? A. It was in my trunk.

Q. The list from which you testified, or with reference to which you testified on your direct-examination was made out from memory, wasn't it? A. Was made out from memory, yes.

4677 Q. Have you compared it with the list that is in the back end of that book? A. No; if I had I would have made it identical with this one; if I had thought of it.

Q. When you discovered after this examination had begun that you had a list made out just before the goods were shipped and with the articles in front of you, why didn't you compare it with the list upon which you have brought suit? A. That list I already had given to Mr. Benedict.

Q. Have you ever compared the two? A. Never.

Q. Do you know whether the list which you furnished to your counsel is identical with the list in

4678 that book? A. No; it is not identical; because I didn't make a copy. You will find the same articles, but they are not probably placed in the same way.

Q. Where they differ, which is right? A. There is very little difference. I should rather this book.

Q. Where they do differ, which is right? A. This book was made with the goods before me. This book; this book.

Q. What is the first article in that list in that book?

Objected to; the list is the best evidence. Allowed. Claimant's counsel excepts.

A. Forty men's leggings. 4679

Q. Was that all the leggings that you had at the time that these trunks were shipped? A. That is what I had; yes.

Q. Has that list that you have got, got the price or the value of the articles there?

The same objection, ruling and exception.

Y. Yes.

Q. What is the price set opposite the leggings? A. $1,000.

Q. Is that the fair value of them? A. It is.

Q. How much have you charged for those leggings in the list which you prepared and handed to 4680 your counsel? A. I guess about the same thing.

Q. Look at this list where it says 42 pairs of leggings $500, is that the same leggings? A. I guess it is.

Q. Which is right; $500 or $1,000? A. $1,000 is more right than $500.

Q. Why did you only claim $500 for leggings that were worth $1,000? A. I testified from memory here, and here (referring to book) I testify with the article before me.

Q. What has that got to do with that value? A. A great difference I should suppose.

Q. What is the next article in that book? 4681

The same objection, ruling and exception.

A. 280 pairs of moccasins.

Q. What did you value those at when you made that list? A. A. $1,500.

Q. Is that the same 280 pairs of moccasins that is on this list which you furnished your counsel and marked Exhibit 1 for Identification, and valued at $1,000? A. Probably.

Q. Why did you charge only $1,000 for them when they were worth $1,500? A. I testified from

4682 memory there, and here I testify with the goods before me.

Q. What is the next article on the list in that book?

Mr. Benedict: I make the same objection to each question on this line.

Same ruling and exception.

A. 40 war shirts.

Q. What value did you put on those when you made that list in that book? A. $4,500.

Mr. Haldane: I ask counsel for claimant whether
4683 they will produce that book so that we can offer that list in evidence.

Mr. Benedict: Yes.

Counsel for *Bourgogne* offers in evidence the list heretofore marked Petitioner's Exhibit 1 for Identification, and it is marked *Bourgogne's* Exhibit 1 of this date.

Counsel for *Bourgogne* offers in evidence the book produced to-day by the witness and it is marked *Bourgogne's* Exhibit 2 of this date.

The six pages containing the list referred to by the witness contain the following entries:

"FRANCE.

4684

Napoleon I gravures " miniature " images Ind paintings Portraits	.....	2,000

MONAIES GREEK ET ROMAINES.

Scarabis figures Egyptian Crucifix Medailles religious	.....	500

George Deslions. 1568

AUSTRALIA. 4685

Boomerangs
clubs } 600

SOUTH SEA ISLAND.

Masks
lances
clubs
paddle
Bow & arrow } 2,000

EUROPE.

327 Collection de pipes..... 3,400 4686

AFRICA.

Assagaies
masks
clubs } 1,000

(IND COL)

40 leggins man..... 1,000
280 moaccasins 1,500
40 war Shirt 4,500
40 " Bonnets 3,000
23 " Clubs 500
20 Ghost shirts 250 4687
40 shields 4,000
15 Tomohawk 800
600 Arrow flint 650
10 gun caisses 275
10 Bow & arrow stel..... 75
4 boys & girls' dresses..... 200
6 Prs Necklace (beads) 250
6 " Wampum 350
" Elk teeth
3 " Bear Claws } 150
2 " human teets 100

4688	20	head Dress	200
	20	Dancing belts	500
	2	" stick	
	10	Beaded belts	150
	500	Photos	300
	3	Peruvian momies	900
	2	wampum belts	200
	1	Ind skull	250
	5	Peruvian heads	500
	1	Buffalo head	25
	1	Ind sadde	50
	2	Papoose	
	2	Cradles	150
4689	2	Buffalo robe	175
	5	Painted Skins	3,000
	2	Skin emb. porcupine	3,500
	6	Necklace Deer hoofs	150
	6	Rattles (turtle)	200
	10	Ind Masks	350
	2	Rattles (skin)	25
	2	Drums	200
	4	Squaw dresses	900
	4	" leggins	50
	15	Blankets	1,100
	80	Tobacco pouches	2,000
	15	quivers	500
	4	Buffalo horns	20
4690	2	lances with scalps	500
	15	scalps	2,000
	2	scalp knife	50
	10	Scabbard	100
	10	Pouch cloth	100
	10	Belt for leggins	100
	2	Teepes	
	10	" miniature	175
	6	Gambling Imp	
	300	Ind pipes	3,500
	10	Ind medales	350

George Deslions. 1570

2	Parfleche	25	4691
10	Saddlebags	600	
	Ind Books	500	
2	Cowboys outfits	75	
1	cowgils "	50	
10	whips, medecin etc	150	
10	hair ornaments	150	
6	spoons	20	
5	baskets	20	
10	P Bracelets	25	
6	Pr Ear Rings	300	
15	Ind rings	50	
	?	150	
2	saddlecloths	100	4692
2	lasso rawhide	10	
2	" horsehair	6	
1	Squaw dress (Elk)	300	
10	Ind dolls	175	
25	game bags	550	
2	Ind chief	5,000	
12	Alaska masks	400	
2	" rattle	100	
4	" tothem	75	
6	" lances	150	
2	" Gambling Imp	6	
6	" Ivry figure	20	
2	" Paddle	10	4693
4	" Canot	50	
2	" carved tusks	50	
15	Spoons carved	50	
6	Baskets	10	
2	horn carved	50	
2	Spanish trunks	175	
2	Mex Spurs Iron	150	
2	Mex Spurs silver	500	
2	Mex hats	250	
2	Mex Sombrero	100	
1	Saddle silver ornamented	500	

4694	2	Bridles "	300
	10	Aztec mask	1,000
	1	camera	25
	2	Breast ornament	75

Q. When did you say that list in that book was written? A. It would be a month before the sailing of the *Bourgogne*.

Q. Is it in your handwriting? A. Yes.

Q. Did you copy that from anything or is that an original list made from the articles in front of you? A. From the articles that was there.

Q. And it was made for the purposes of insur-
4695 ance, was it? A. Made for the purposes of insurance.

Adjourned to Wednesday, November 19, 1902, at 2 P. M.

NEW YORK, November 19, 1902.

Adjourned to Thursday, November 20, 1902.

NEW YORK, November 20, 1902.

Met pursuant to adjournment.

4696

Present—THE COMMISSIONER,
Messrs. HALDANE & KOPF, and
Mr. E. G. BENEDICT.

CROSS-EXAMINATION OF GEORGE DESLIONS RESUMED:

By Mr Haldane:

Q. Have you the original list which you made out, and from which the typewritten list was made, which has been introduced in evidence? A. Yes.

Mr. Haldane: We offer that in evidence.

It is received and marked Petitioner's Ex- 4697
hibit 3.

Q. The address book which you had at the last session, have you that?

It is produced.

Q. How much of the goods which you shipped on the *Bourgogne*, that is, how much in value, represented your collection and how much articles which you had purchased to sell again? A. I can't tell.

Q. Can you take the list which you furnished your counsel and say which of the articles on the list belonged to your collection and which of them 4698
you held for sale again? A. Your question is not in such a way that I could answer it; because it needs an explanation on that; I can't tell; I could give an explanation.

Q. If you can't do that why can't you do it? A. To select a collection it seems that you have no idea what the word collection means. To exhibit a collection you take the best specimen, the rarest specimen, therefore, you must have the object before your eye to do that selecting; not selecting on paper.

Q. You couldn't take this list and separate the articles and say whether they belonged to your collection or whether they were for sale? Could you, 4699
or not? A. Certainly not.

Q. When you were making out a list of things for which you claim payment of the petitioner, why didn't you include several hundred dollars that your wife had in her satchel? A. I only made an estimation of my collection; I didn't make estimation of any other thing.

Q. Why didn't you include the money that was lost? A. I didn't think of it at the time; there was

4700 also clothing and jewelry which was lost. I will do it if you want.

Q. At the last session you stated that you had sent for a certificate of your first wife's death; have you received it? A. Not yet.

Q. To whom did you write? A. In Santa Fe.

Q. To whom? A. The archbishop—not the archbishop, to Father Derache.

Q. He is a priest? A. Yes, sir.

Q. Living in Santa Fe ? A. Yes.

Q. Why did you send to him? A. Because he is the man who has got it, or will get it for me.

Q. Did he bury your wife? A. Well, he was the
4701 priest at the funeral.

Q. Is he there now, are you sure? A. I don't know; he was there when I left.

Q. When did you send that letter? A. Last week.

Q. Look at the paper I now show you, and state whether or not that is the kind of paper that was put on your trunks which you called a counter mark? A. (Examines paper.) I don't remember; I stated before that I know it was a yellow paper. I don't know; I couldn't tell you now; it is too late.

Q. Look at the other paper which I show you, and state whether you can say that that was the kind of paper that was put on your trunks? A. I
4702 don't know; I couldn't tell you.

Q. Which of those two is the more like the paper that was put on your trunks? A. I couldn't tell you.

Q. One of those is double the size of the other, isn't it? A. Yes.

Q. Don't you know which is the more like the one, in size? A. I didn't take any size at the time; I didn't dream that the *Bourgogne* was going down; the best of my recollection is that it was a yellow paper.

Q. But whether it was like either of these you 4703
have no recollection; is that right? A. I can't tell.

The larger paper is marked Petitioner's Exhibit 4 for Identification, and the smaller paper Petitioner's Exhibit 5 for Identification.

Q. You stated at the last session that when you were married the second time you signed a certificate of marriage on the Bible. What became of that Bible? A. On board the *Bourgogne*.

Q. You stated that the ceremony was legalized by a notary public; what do you mean by that? A. A notary public certified the signature of my wife and my signature. 4704

Q. Who was he? A. He was a notary public living on Twenty-third street.

Q. Do you know his name? A. No.

Q. Did you ever see him before? A. I saw the office before, of notary public.

Q. Have you seen him since? A. Probably; I couldn't tell; I didn't pay any attention to him.

Q. Between what avenues did you live on Twenty-third street? A. Sixth and Seventh; I think Sixth.

Q. Do you know whether his name was Appel? A. I don't remember his name; I couldn't tell.

Q. You know, do you not, that the World's Fair in Chicago was held in the year 1894? A. Probably. 4705

Q. Do you know what time of year it closed? A. No, I think it closed in the fall, to the best of my recollection; I don't know.

Q. How long after the closing of the Fair was it that you left for Europe? A. I went to Europe for the Fair in Antwerp.

Q. How long after the Chicago Fair closed was it that you left for Europe? A. I couldn't tell you.

Q. Did you leave before the following new year? A. I don't remember; I went to see the Fair in Antwerp.

4706 Q. What time of year was it when you left for Europe? A. I don't recollect.

Q. Was it hot weather or cold weather? A. I don't remember.

Q. You were in Europe about two years, weren't you? A. I know I was more than a year; a little over a year.

Q. You testified you were in Europe a year and a half or two years, didn't you? A. May be; it was more than a year.

Q. How long was it after you returned from Europe before you went to Santa Fe? A. Not long after.

4707 Q. Well, how long? A. A month or six weeks or two months.

Q. How long did you stay in Santa Fe? A. I don't remember.

Q. A year? A. No, I didn't stay a year in Santa Fe.

Q. You returned to New York in the fall, didn't you? A. Yes; it was cold weather when I returned.

Q. You have charged this Company on the list which you gave to your counsel, with forty war shirts of the value of $5,000, and you have testified at page 276 of your examination that on your re-

4708 turn from Santa Fe you had several war shirts, and being asked to particularize, on page 296 you stated that you had more than one. Where did you buy the rest of those war shirts between the time you came back from Santa Fe and the loss of the *Bourgogne?* A. Wherever I could get them.

Q. Those war shirts are listed here at an average value of $125 each, are they not? A. Yes, and they are worth more than that.

Q. They are listed at that, aren't they? A. I don't know.

Q. There are forty war shirts valued at $5,000? A. I guess so.

Q. And when you came back from Santa Fe you had only "more than one." When the *Bourgogne* went down you say you had forty on board; where did you get the rest of them? A. Bought them. 4709

Q. From whom? A. I have stated several addresses there; let me see the book, I think I may find some there. I bought the whole collection which was in Governor's Island; I bought it from Captain Wheeler; I know he was the captain of the 7th regiment of cavalry—the 5th maybe; yes (referring to book) the 5th.

Q. How many war shirts did you buy of him? A. I don't remember; there were several war shirts; one supposed to belong to Chief Gall, and several prominent chiefs. 4710

Q. How much did you pay him altogether? A. That I don't remember now.

Q. Don't you remember how much he charged you for war shirts? A. I didn't buy war shirts alone; I bought all that belonged to him there.

Q. Do you remember what you paid him for these war shirts or any of them? A. I don't remember; I bought all in bulk; whatever he had there.

Q. About how many hundred dollars did you pay Captain Wheeler for what you bought of him? A. For several years I was——

Q. That isn't an answer; about how many hundred dollars did you pay him? A. I don't know; I stated before. 4711

Q. Do you know whether you paid him a hundred dollars? A. I don't know.

Q. Although you say you bought several war shirts from him? A. There were several.

Q. And yet you don't know whether you paid him as much as a hundred dollars? A. I didn't say that.

Q. Did you pay him as much as a hundred dollars? A. Certainly; I paid him more.

4712 Q. Did you pay him more than $200? A. I don't know.

Q. That still leaves a large number of war shirts unaccounted for. Of whom did you buy the rest? A. Of some dealer; anybody who had something to sell; I have stated before.

Q. Is that the best answer you can give to that? A. Yes, that is the best answer I can give to that.

Q. Did you buy the rest of these war shirts in the fall of 1897 and the spring of 1898? A. I bought war shirts for ten years; more than that.

Q. I mean the rest of these forty war shirts. A. What rest?

4713 Q. The ones you haven't accounted for? A. I don't know; I stated before that I bought of anybody who had something to sell.

Q. I am asking you about the difference between the forty war shirts which you claim to have had in July, 1898 and the several war shirts, as you call it, that you had when you came back from Santa Fe. Where did you buy the rest of them? A. I don't know.

Q. Do you know what you paid for any of them? A. All sorts of prices.

Q. Now take this list that is in the book, and the typewritten book. In the list at the back of the book you have got ten Indian dolls valued at $175,
4714 haven't you? A. Yes.

Q. And in the list which you gave your counsel you have ten Indian dolls valued at $50, haven't you? A. So it is on the list.

Q. And when you testified as to the value of these same ten Indian dolls you testified they were worth from $150 to $200, didn't you? A. Probably.

Q. In the list that is in the book you have got ten Aztec masks valued at a thousand dollars, haven't you? A. Yes.

Q. And in the list furnished to your counsel you

have got ten Aztec masks valued at $500? A. Yes, 4715
$500.

Q. And when you testified you testified that the masks were worth a thousand dollars, didn't you? A. Probably; I guess so.

Q. In the list in the book you have got Indian books valued at $500, haven't you? A. In the book? Yes.

Q. And in the list upon which you brought suit you have those same Indian books valued at $300, haven't you? A. Yes.

Q. And when you testified as to their value you testified they were worth $500, didn't you? A. Yes.

Q. Now turn to Mexican spurs; in your book 4716
you listed two pairs at $500, did you not? A. Yes.

Q. And in the list upon which you sued you valued them at $200, did you not? A. Yes.

Q. And then, when you testified you testified they were worth $500, didn't you? A. Yes.

Q. With reference to Mexican iron spurs; in your book you listed them at two pairs worth $150? A. Yes.

Q. And the list upon which you brought suit you listed two pairs at the value of $50? A. Yes.

Q. And when you came to testify you came back to the valuation in the book, $100 to $150, didn't you? A. Yes.

Q. In your book you listed two drums at $200, 4717
did you not? A. Yes.

Q. And in the list upon which you brought suit they are $75, are they not, two drums? A. Yes.

Q. And then when you testified you testified the same two drums were worth $200, didn't you? A. Yes.

Q. War bonnets; in that book you have got forty war bonnets worth $3,000? A. Yes.

Q. And in your list that you made for your counsel you have got them at $1,200, haven't you? A. Yes.

4718 Q. And you testified, did you not, that they were worth $2,500 to $3,000? A. Yes, sir.

Q. In your book you have got forty pairs of leggings, valued at a thousand dollars, haven't you? A. Yes.

Q. On your list you have got forty-two pairs, worth $500, haven't you? A. Yes.

Q. And you testified, did you not, when you were being examined, that you had forty pairs worth from a thousand to $1,200? A. Yes.

Q. In your book you charged us with 280 pairs of moccasins at $1,500? A. Yes.

Q. And the same number of moccasins on your
4719 list you valued at a thousand dollars, did you not? A. Yes.

Q. And when you came to testify you said you had from 250 to 300 pairs, worth from $1,250 to $1,800? A. Yes.

Q. In your book you have listed five painted Buffalo skins valued at $3,000? A. Yes.

Q. And in the list which you gave your counsel you had five painted Buffalo skins worth a thousand dollars, didn't you? A. I guess so.

Q. And when you testified you testified that those five skins were worth $2,500 to $3,000, didn't you? A. Yes.

4720 Q. In your book you listed, did you not, two Buffalo skins embroidered with porcupine quills, of the value of $3,500? A. Yes.

Q. In the list which you gave your counsel you valued the same skins at $750, didn't you? A. Yes, well, yes.

Q. When you testified as to the value of those skins you testified they were worth $2,500, didn't you? A. Yes.

Q. In your book you valued your Australian collection at $600, did you not? A. Yes.

Q. And on the list which you made for the pur- 4721
poses of this suit you valued it at $200, didn't you? A. Yes, I guess so; all right, yes.

Q. And then, when you testified as to the value of that collection you testified it was worth from six to seven hundred dollars, did you not? A. Yes.

Q. Have you ever figured up what the total value of these articles was, as shown by the list in the book? A. Yes.

Q. When did you add it together? A. I added when I was going to have it insured.

Q. How much was it? A. I studied that $50,000; I calculated to have the collection insured for $50,- 000, at Washington square. 4722

Q. That isn't what I asked you; did you ever sum up the valuations shown in that list, to see what the total value was? A. I studied.

Q. How much was it? A. I figured it up to $50,- 000; I stopped adding after reaching $50,000.

Q. Do you know as a fact now how much that list of articles in the book foots up in amount? A. I know it is over $50,000; I don't know the correct amount.

Q. Did that list, at the time it was made, comprise all your collections? A. It comprised everything I had.

Q. Have you ever figured up how much the list 4723
that you furnished to your counsel foots up? A. No.

Q. Don't you know whether it was over or under $50,000? A. I guess about $50,000.

Q. Have you gone over your testimony to see how much in value you have sworn to during your examination? A. I say the collection was worth a hundred thousand dollars.

Q. Do you know what your testimony shows to be the value of the goods in these packages? A. I don't know.

4724 Q. Referring to the discrepancies to which I have called your attention, between the list in the book, the list upon which you brought suit, and your testimony, can you explain why it is that your testimony corresponds with the list in the book and not with the list that you furnished to your counsel?

Objected to that it is not based on fact.

Mr. Haldane: I have called his attention specifically to the differences.

Q. (Repeated.) A. When I made the first list on the book I had everything before my eyes; while the
4725 second list I made from memory after the sinking of *La Bourgogne*.

Q. Did you understand my question? A. That is what I understood.

Q. Then that is your answer, is it? A. It is, yes.

Q. If you didn't fully understand the question say so. I don't want to set any traps. Is that the best explanation that you can give of the fact that your testimony in the instances to which I have called your attention corresponds with the list in the book and not with the list that you made for the purpose of this suit? A. I say the list on the book was made when the collection was before my eyes,
4726 and this list was made from memory after the sinking of *La Bourgogne*.

Q. You were testifying from memory too, weren't you? A. I was testifying from memory too.

Q. And you have had this list which you gave to your counsel before you, and not the book? A. I had no list before me.

Q. I mean since you brought this suit; since you made out that list you have had access to that list, have you not? A. I never paid any attention to it or looked at the list since I made it.

Q. And how about the book; have you had that with you? A. No, the book was in my trunk. 4727

Q. How long was it in your trunk? A. I don't know how long; I recollected about this book when you questioned me about the list.

Q. You got that book a year or two before the *Bourgogne* went down? A. Yes, sir.

Q. And you testified that it was a pocketbook which you carried in your pocket? A. I used to have it——

Q. When did you stop carrying it in your pocket? A. When I was going to sail for Europe; I didn't know what became of the book; I had more important things to think about. 4728

Q. You made that list only a week or two before the boat sailed? A. Exactly, or three weeks.

Q. A short time? A. A short time, yes.

Q. Then what did you do with the book? A. I don't remember; when we packed we packed everything; it may have been in some of our pockets, but it may have been in the bureau.

Q. After your bureau was gone, and after your family left what did you do with the book? A. I didn't do anything with it, from my recollection.

Q. Do you know where it has been since 1898? A. In my trunk.

Q. All the time? A. I don't know whether it was all the time; may be it was in the bureau. 4729

Q. When the *Bourgogne* left New York how many trunks did you have left behind? A. With me here? One small leather trunk, and another small trunk.

Q. Which of those trunks was that book in? A. That I don't recollect either.

Q. Do you remember you testified on the 16th of October here that you had just found the book? A. When you questioned me?

Q. Yes. A. I don't recollect that I testified that.

4730 Q. Isn't the fact that you had just found it during the week before October 16th last? A. The fact is that I thought of the book when you referred about addresses; because that book was given to me for addresses, and I thought of it; I said "Yes, that book will be somewhere," and I looked for the book. I probably had seen the book a year or two before; but I don't know.

Q. You don't know where you found it? A. The book was in my trunk.

Q. You found it in your trunk? A. Lately that book was among the papers; among books; I didn't pay any attention to it.

4731 Q. When did you find that book last? A. I looked for that book when you questioned me about addresses; and that is the time when I started to hunt for that book.

Q. You remember stating, when you were examined on the 16th of October, that you had found the book? A. Yes, I looked for it and found it.

Q. How long before that was it that you found the book? A. I was looking for that book; I said it before, three times. I looked for it when you questioned me about addresses.

By the Commissioner:

4732 Q. You don't understand the question. Mr. Haldane says that on the 16th of October you produced it, and he asks how long was it before that that you found it? A. I don't know, your Honor. I looked for the book after I was questioned here about addresses; a week or two weeks, I don't know.

By Mr. Haldane:

Q. At that time, on the 16th of October, you testified, did you not, that it was an address book? A. Yes.

Q. And that there was nothing else in it that you remembered? A. I don't remember testifying that there was nothing else in it. 4733

Q. On page 239 you stated: "I have found a sort "of a book where I have many addresses of dealers. "I don't remember to-day. I forgot that little book "to-day." Then you were asked:

"Q. Where is that book? A. I have it at "home.

"Q. You say that contains a list of deal- "ers? A. Many; I didn't look at it; I don't "know if it contains more.

"Q. How is it that that book didn't go on "the *Bourgogne* with the others; why not? 4734
"A. Because it was in my pocket probably; "it is a memorandum book; not a business "book.

"Q. Why didn't you bring it to-day? A. "I said I forgot it."

At that time didn't you know that this book had a list in it? A. When I saw that book I certainly knew that there was a list in it.

Q. Answer the question. A. Yes.

Q. I understand you to testify that that list in the book was made with the articles listed in front of you; is that right? A. That is right. 4735

Q. Was that the only way that you had to make up a list; by having the articles in front of you at that time? A. If it was the only way I had to make a list?

Q. Yes. What did you have to look at them for in order to make a list? A. To be more correct; to be more sure of it. The man wanted to know what value I wanted insured.

Q. You had a list already? A. What list?

Q. Didn't you have another one? A. No.

4736 Q. This was a short time before the boat went, was it? A. It was some time before.

Q. Where were your catalogues then? A. Catalogues of my collection?

Q. Yes. A. That is this——

Q. (Repeated.) Where were your catalogues then? A. In my bureau.

Q. Why didn't you take your catalogue? A. Because it was referring to my collection strictly, while this involved everything I had.

Q. Did you not use your catalogue at all in making that list? A. No.

Q. Do you remember testifying (page 166) that
4737 you had a catalogue which was a book by itself, which you intended to publish? A. Exactly.

Q. Weren't all the articles that you had in that catalogue? A. No.

Q. Then your catalogue wasn't complete? A. It was complete.

Q. You testified at your last examination that this insurance man was a friend of yours, didn't you? A. I didn't say that.

Q. I refer to page 311. You were asked:

> "Q. To whom did you make application "for insurance? A. I made no application; "there was a gentleman in the insurance
> 4738 "business that came to see me. He was a "friend."

How is it you can't remember his name if he was a friend? A. I didn't say he was a friend.

Q. On page 253 you were asked:

> "Q. Let me ask you again, is it possible "that you don't remember whether or not "you ever had any correspondence with any "dealer or collector of curios living in any "country of South America? A. No, because "I haven't got my book before me."

Is that the book referred to? A. The book I re- 4739
ferred to was on board the *Bourgogne,* it was a business book; this is nothing but a notebook that I had in my pocket.

Q. On page 254 you were asked:

> "Q. What did you keep in that book? A. "The writing was on the sheets. The ad- "dresses of dealers and customers."

Still you say you didn't refer to this book which you now have? A. No.

Q. How many address books did you have? A. One.

Q. Is that the only one that you produce here? 4740
A. That isn't an address book. I didn't refer to that.

Q. You didn't testify that the book you now produce was an address book? A. Any kind of a book; I would take an address on a book, or anything, and report it on my business book; not this book.

Q. What became of this insurance matter; did you see the man again after you talked with him about it? A. I told him that I didn't want to insure my collection, as I made up my mind to go abroad.

Q. What insurance was he talking about; insurance here in New York or insurance in transit? A. He offered me insurance for fire here in the city, 4741
and after that, when I said I would go abroad he said, "Why don't you let me insure you to go abroad." I said, "No, the boats are all right."

Q. So it didn't amount to anything? A. I didn't insure; I wish I had.

Q. You had no idea of insuring, had you? A. I stated positively that I had an idea of insuring.

Q. When did you change your mind about insuring? A. When I knew that I was going abroad.

Q. What company did you intend to insure in? A. I don't know; he was the relative or friend of

4742 an artist, a gentleman that I knew, who was living on Washington square, and in visiting my collection he said that such a valuable collection should be insured.

Q. Was that before or after you made the list in the book? A. I made that list for him while he was there.

Q. In Washington square? A. In Washington square.

Q. Is there any way that you can ascertain his name, that you know of? A. Not unless I found this gentleman who knows him. I believe he is a relative or intimate friend of his; he was.

4743 Q. Will you make an effort to get his name between now and the next session? A. Yes; the only way I could find him would be to get the other man.

Q. You know he is either a German or a Jew, don't you? A. He was a Jew; looked like a Jew.

Mr. Kopf: This book contains a number of addresses of collectors; I should like to have the stenographer take it and make a list of those addresses. The witness has testified that he had those addresses, but they are not all in the testimony.

Mr. Benedict: I make no objection.

4744 Mr. Kopf: I wish to have noted on the minutes that we give the other side notice to produce all original invoices or copy of invoices, original bills or copy of bills, by which appear the names of persons from whom the witness purchased the goods mentioned in his collection, the address of the person, and the amount paid for it.

Mr. Benedict: We do not produce them because we haven't got them.

Mr. Kopf: Also all books and papers, correspondence, which may have reference to the articles

which the witness has testified were lost on the 4745
Bourgogne.

Mr. Benedict: I put on the record the formal statement that, as it appears by the testimony that all books and papers referring to such matters went down on the *Bourgogne,* we cannot and do not produce them; we have no other books.

Q. Have you got any letters from any of these people that you have received since the *Bourgogne* was lost? A. Not of my knowledge.

Q. You have got a lot of papers, haven't you, relating to curios and collections? A. I don't know anything about it; you may know better than I. 4746
Certainly I have not.

Q. Have you ever made any effort to get together another collection since you lost your other one? A. No.

Mr. Kopf: I ask the witness if he cannot obtain the bills for the goods which he purchased during the period he has testified to, by writing to the persons whose names and addresses appear in petitioner's Exhibit No. 2.

The Witness: I don't know.

Mr. Kopf: I ask the Commissioner to make an order that these copies of these bills be produced.

Mr. Benedict: I object. We don't produce them 4747
on our side; if the other side wants them they can produce them.

The Commissioner: I don't think I have any right to order that.

By Mr. Kopf:

Q. Can you, by taking the several lists which are in evidence here, the articles which you have claimed are lost, make a written description of them, to save time in examining as to each item?

4748 A. I could give you the description of every article, in general.

Mr. Kopf: As the testimony now stands there is no way in which we can get anybody to testify as to the value of them.

The Commissioner: I think you have made a thorough examination about the articles.

The Witness: I could describe every article.

Mr. Benedict: I don't think he has been asked for any particular description.

Mr. Haldane: I would be perfectly willing to take an adjournment so that the witness can do the best he can in that direction, in writing, if he wants
4749 to. We have got to have some way by which we can introduce evidence as to the value of things.

By Mr. Haldane:

Q. You had full descriptions of all these articles in your catalogue, hadn't you? A. Most certainly it was in the catalogue.

REDIRECT-EXAMINATION BY MR. BENEDICT:

Q. Did you ever have any photographs taken of your collection, or of any part? A. I have, yes.

Q. Take the collection of Indian pipes which is
4750 No. 3 on Petitioner's Ex. 3, did you ever exhibit that in the City of New York? A. Yes.

Q. Whereabouts, do you remember? A. At the Kit-Kat Club.

Q. Where was that? A. That was in Fifteenth street.

Q. Do you remember whether that exhibition was held any time near the sinking of the *Bourgogne?* A. It was may be a couple of years before.

Q. Did you have a photograph taken of it while it was there? A. Yes, sir.

Q. Have you got that photograph? A. I have it 4751
here.

Q. Is that a photograph of your pipes which were exhibited at the Kit-Kat Club at the time you speak of?

Objected to as immaterial and incompetent. It is allowed.

A. Yes.

Q. Looking at that can you state whether those pipes were in your collection that you lost on the *Bourgogne?* A. Yes.

The photograph is offered in evidence.

Objected to as incompetent and immaterial, 4752
that it doesn't prove anything. Objection overruled.

The photograph is received and marked Deslions Ex. 1.

Q. You said you had other photographs taken? A. Yes, sir.

Q. What became of them? A. I think they are here.

They are produced.

Q. (Offering witness three papers.) What are these? A. The proofs of some photos that were taken with the intention of publishing to illustrate a book. 4753

Q. When were they taken? A. When I was in Washington square.

Q. Were those articles among the articles which were lost on the *Bourgogne?* A. Certainly; they were good for that purpose.

Q. Taking this photograph, what is that a photograph of? A. This is a complete outfit of a cowboy.

The photograph is offered in evidence.

Same objection and ruling.

It is received and marked Deslions Ex. 2.

4754 Q. What are the articles in this photograph? A. There is a war shirt embroidered with porcupines and trimmed with scalp locks; in the center of the shirt is a grizzly bear claw necklace; under the war shirt there is a collar made of deer hoofs. On both sides represent two scalping knives in their scabbards. On one of the scabbards is a Tamarack pipe and on the other side a war club. On the left side of the picture is a pair of Apache leggings with moccasins. Under these leggings and moccasins is a papoose hood embroidered with porcupine quills. Next to it is a tobacco pouch with the autograph of Running Deer on it. On the right hand
4755 side is a part of a war bonnet which shows that the eagle feathers are embroidered with porcupine quills, and the background shows the photography on the Buffalo skin.

The photograph is offered in evidence.
Same objection and ruling.
It is received and marked Deslions Ex. 3.

Q. I now show you the fourth photograph, and ask you to describe what that is a picture of. A. The center of the picture represents a war bonnet made of eagle feathers, trimmed with porcupine quills; the center of the bonnet is trimmed with er-
4756 mine tails; several scalps are attached to the bonnet. On both sides of the bonnet is a scalp; on the left side is a club and underneath is a deer hoof necklace; and also on the left is a part of a war shirt; on the other side, right hand, is a gun case embroidered with beads, and the whole is tacked on a Buffalo robe illustrated with photography on the Buffalo robe.

The photograph is offered in evidence.
Same objection and ruling.
It is received and marked Deslions Ex. 4.

Q. Are there any other photographs? A. No, 4757
sir.

Q. You said you had a great many photographs taken. A. Yes.

Q. Where are the rest? A. On board the *Bourgogne;* those are proofs.

RECROSS-EXAMINATION BY MR. HALDANE:

Q. When did you find these photographs? A. Those were in one of my trunks.

Q. Why didn't you produce them before? A. I wasn't asked to produce them before.

Q. Is that the reason? A. That is the reason.

Q. Because you weren't asked to? A. Yes. 4758

Q. If you had produced this photograph, marked Exhibit 1, of the collection of pipes, you wouldn't have had all that trouble about telling us what pipes you had in your examination.

Mr. Benedict: I object and move to strike out the question.

It is allowed.

A. You didn't ask me any description of any of my pipes.

Q. Where was this photograph then, when you were being examined about your collection of pipes? A. I gave it to my counselor. 4759

Q. They have had it during all the time you have been examined here? A. I presume so.

Q. Do you know? A. I don't know.

Q. When did you give it to them? A. I don't remember; some time ago.

Q. A year ago? A. No; lately; that is a photograph I obtained from the man who made it, lately.

Q. When was this photograph taken? (Ex. 1). A. It was made lately, from the original negative.

Q. When? A. Two or three weeks ago; a month ago possibly.

4760 Q. Who made it? A. Mr. Ally.

Q. Is he a photographer? A. He is.

Q. Where is his place of business? A. Twenty-first street.

Q. Where? A. He is with Tonnele & Co.

Q. Where is he? A. Twenty-first street, between Broadway and Fourth avenue.

Q. How long ago is it since he made this? A. He made the original——

Q. Not the original; when did he make this copy? A. About a month or five weeks ago.

Q. Since you were first examined here? A. I guess so.

4761 Q. Then your counsel hasn't had it all the time before you were examined? A. I gave it to him since I obtained it.

Q. Don't you know I asked if your counsel had had it a year? A. No, he didn't have it a year.

Q. They haven't had it a month? A. May be a month or six weeks.

Q. I thought you said it was taken about three weeks ago. A. I don't know; you have adjourned so many times I can't remember.

Q. How long ago was it that you got this? A. Six weeks.

Q. How do you know that this is the same photograph that was taken of your collection in the
4762 Kit-Kat Club? A. I know it is.

Q. How do you know? A. I know it is; he has the negative.

Q. How do you know he has? A. Because he told me; he made several other prints; he sold some prints.

Q. Where was this collection of pipes at the time it was photographed? A. It was in the Kit-Kat Club.

Q. Whereabouts? On the wall? A. On a large —something made to put against the wall.

Q. How came it to be there? A. Because I lent 4763
it to the Kit-Kat Club; they asked me to lend it to them.

Q. Who was the person you lent it to? A. I lent it to the club.

Q. Who asked you to? A. The Vice-President or President.

Q. Don't you know the name of the man who asked for it? A. Several asked me—several artists told me that it would be a nice thing for me to make an exhibition of pipes for their smoker; they were going to have a smoker.

Q. They knew you? A. Yes, many of them knew me; I don't remember anybody in particular. 4764

Q. Of all these men can't you give us the name of anybody that asked you to lend your collection to the club? A. There was a man by the name of Wolf; the President or Vice-President at the time.

Q. Anybody else? A. I don't remember; it is too long ago, who asked me.

Q. Does this picture represent your entire collection of pipes? A. No, sir, part of it; the space was limited to that occasion.

Q. And this picture was taken about two years before the *Bourgogne* was lost? A. A year or two.

Q. Well, which? A. I don't know.

Q. Were any of these pipes, represented on this 4765
picture here, for sale? A. No.

Q. Not one of them? A. No, sir, because I was collecting pipes for myself; there is not one specimen here for sale.

Q. Did you sell any pipes? A. Oh, I certainly sold many pipes.

Q. Lots of them? A. Not from my collection.

Q. How do you know that not one of those pipes that are on that picture was sold? A. If you were a collector you wouldn't ask me.

4766 Q. How many are on that picture, about? A. I don't know.

Q. Haven't you any idea? A. I have no idea.

Q. Exhibit No. 2. Do you call that a photograph? A. I call it a print; a proof, a blue print; a proof; that is what I call it.

Q. When did you get that? A. That was made in Washington square the winter before—about six months before the sinking of *La Bourgogne*.

Q. This same paper that I hold in my hand? A. Exactly.

Q. Where has it been ever since? A. In my house; in my trunks.

4767 Q. Why didn't you produce it before? A. I was not asked.

Q. You knew you had it? A. I knew I had it.

Q. You remembered that you had it; when you were testifying about cowboy suits you remembered that you had this blue print at home? A. Yes.

Q. Has it been kept in any cover? A. It was kept in an envelope.

Q. Where is the envelope? A. I don't know; I didn't pay any attention to the envelope.

The envelope is produced by counsel.

Q. Who took this blue print; who made it? A. I made it.

4768

Q. Where is the photograph; is there a photograph also? A. You have it.

Q. Negative? A. I don't know.

Q. How did you make this blue print? A. I printed on the negative.

Q. Where is the negative? A. I don't know; destroyed.

Q. Who took the negative? A. I did.

Q. With the camera which was lost on the *Bourgogne?* A. With the camera that was lost on the

Bourgogne; a 5 by 7 camera if you want to know 4769
the size of the camera.

Q. Where was this cowboy outfit when you took the photograph of it? A. On the wall.

Q. Where? A. In my house in Washington square.

Q. In which room? A. The front room.

Q. Which way did that house face? A. It faced the square.

Q. North or south, east or west? A. South.

Q. What number was it? A. That I don't remember.

Q. You have been asked that before; when you say that you don't know the number, do you mean 4770
that you don't know the number you lived in in Washington square? A. Exactly; I don't remember.

Q. How big was the room? A. A very large room.

Q. Did you have any other articles of your collection exhibited on the wall at the same time with the cowboy suit? A. Oh, yes; many.

Q. How long was this picture that you took of the cowboy suit taken before you packed it up? A. I stated before.

Q. Well, state it again. A. It was taken during the winter preceding the sinking of *La Bourgogne;* 4771
the winter before.

Q. The winter of 1897? A. The sinking was the 4th of July, and that was taken during the winter before.

Q. Do you know who you got this outfit from, represented in this picture? A. I guess not.

Q. How long had you had it? A. Oh, many years; ten or twelve years.

Q. If you know that you had had it so long doesn't that enable you to tell us who you got it from? A. No.

4772 Q. How many such outfits did you have? A. I had another one; I had many; I sold some; that was my own outfit.

Q. How much was this one worth? A. Let me see the picture and I can see what is on that suit.

Q. Which of the articles on there represent the cowboy outfit? A. That shirt, chaps, cowboy hat.

Q. What was that outfit worth, now you have looked at the picture. A. I guess about fifty dollars.

Q. Does that picture show the condition in which it was? A. It certainly does.

Q. Does that picture show what it was made of?
4773 A. To any connoisseur, yes.

Q. Are you a connoisseur? A. I am; I claim to be.

Q. To a connoisseur what does that picture show, as to the material? A. It shows that the leggings, being stiff, were made of stiff leather, and it shows that the shirt being made of soft material was made of buckskin.

Q. To a connoisseur, then, that picture shows that the shirt couldn't have been made of anything but buckskin; is that right? A. That is right.

Q. To a connoisseur what does this picture show as to the material of which the hat was made? A. Felt.

4774 Q. And what does this picture show as to the material of which the gloves were made? A. Made of buckskin.

Q. It couldn't be any other skin? A. No, it couldn't be any other skin.

Q. This picture, Exhibit 3, did you make that too? A. I made every one of them; to cut it short.

Q. Where were the articles represented in the picture, No. 3, when you took the picture of them? A. I guess it shows to be on the wall there.

Q. The same wall of the same room? A. The 4775
same wall of the same room.

Q. At the same time as the other one? A. May be a week before or later, or a month; I don't know.

Q. But these articles were on the wall at the same time the others were on the wall? A. Yes.

Q. How much space did that collection take up on the wall? A. I don't know; it was a big room; I can't tell.

Q. You can see that room in your house now? A. Yes.

Q. Can't you tell us? A. Pretty near as big as this one.

Q. How many feet each way? A. I didn't meas- 4776
ure it; I am not a carpenter; I was only a collector—no carpenter.

Q. Is that the best answer you can give when I ask you to give us your judgment as to the amount of space your collection took on the wall; that you are not a carpenter? A. Yes.

Q. Now Exhibit 4. Where were the articles represented in this picture when it was taken? A. On the wall.

Q. Of your room? A. Yes.

Q. At the same time as the articles shown in the other pictures? A. Yes, sir.

Q. Was this picture taken about the same time 4777
as the other two? A. Probably.

Q. What is your recollection? A. Maybe the same day, or maybe a month before.

Q. How much space did this collection represented in Exhibit 4 take up on the wall? A. The collection couldn't be put on the wall all together.

Q. How much space did this, represented by Exhibit 4, take up on the wall? A. That photograph there?

Q. Yes. A. I don't know; something like, maybe, from here to the wall (six to eight feet).

4778 Q. Was that in height or in width? A. I guess that represents about six feet in width; in height, more.

Q. About six feet in width and about eight feet high? A. I presume so; I didn't measure it.

Q. The same is true of these other articles? A. I don't know.

Q. How many other similiar parts of your collection were on the wall of your room at the same time with these that you have pictures of? A. I don't know; if I was taking photographs I might take some out and put some others in, in order to photograph them; I don't know.

4779 Q. Looking at this picture of your pipes, which is the most valuable pipe in that collection? A. I would have to go over them carefully, before I should say which one was; which value do you mean? There are different kinds of values.

Q. I didn't ask you anything about that; what are the values? A. There is value of money and there is the value in a scientific way.

Q. Which is the most valuable pipe in either way? A. Intrinsically?

Q. As a connoisseur, which is the most valuable? A. As a connoisseur, I pronounce this one to be the most valuable (indicating by a cross, enclosing
4780 the pipe in a circle).

Q. Where did you get that pipe? A. I bought that in Europe.

Q. Of whom? A. A missionary.

Q. What was his name? A. I don't remember.

Q. Describe that pipe; where did it come from? A. It was an Ashantee pipe; he was a missionary returning from the Ashantees.

Q. What was it made of? A. It was made of clay.

Q. Did you ever have a value put on it by any connoisseur? A. Connoisseurs said that that pipe couldn't be duplicated.

Q. (Repeated.) Did you ever have a value put 4781
on it by any connoisseur? A. Yes.

Q. Who? A. Some gentleman in Europe.

Q. What was his name? A. Mr. Henry.

Q. Where does he live? A. He lived in Milano.

Q. Anybody in New York or anybody within reach? A. There is nobody connoisseur enough for that; you have got to go abroad for that.

Q. Wasn't there anybody in the Kit-Kat Club that was competent to put a value on that? A. No, I don't think, in my estimation, there was.

Q. Do you mean to say that you don't think there is any connoisseur in this class of articles that you know of or that you have ever heard of in 4782
America competent to put a value on it? A. I didn't say that; there are some here.

Q. Who are they? A. I don't know.

Q. How do you know they are here? A. I presume so; I hope there are some connoisseurs, enough for that.

Q. It takes special qualifications to put a value on this pipe? A. A man would have to be a connoisseur.

Q. What would make a man a connoisseur so that he could put a value on this particular pipe? A. Collecting and study; study, the rarity, the difficulty of obtaining such a specimen—those are all 4783
things which make the value of an article.

Q. How much did you pay for it? A. I forget just now what I paid for it.

Q. Can you tell us within a thousand dollars how much you paid for it? A. I guess from one up to a thousand dollars; anything.

The examination of Deslions is suspended for the present, with liberty to recall him by either side.

Adjourned to Friday, November 28th, at two o'clock.

4784 NEW YORK, November 28, 1902.

Met pursuant to adjournment.

Present—The COMMISSIONER,
MESSRS. BENEDICT & BENEDICT and
MR. MURRAY;
MR. HALDANE and MR. KOPF.

GEORGE BIRD GRINNELL, being duly sworn and examined as a witness on behalf of Deslions, testifies:

4785 By Mr. Benedict:

Q. What is your business? A. I am a newspaper writer and writer of books.

Q. Connected with the *Forest and Stream?* A. Yes; the President of the Forest and Stream Publishing Company.

Q. Do you know Mr. Deslions here? A. Yes, I have known him for some years.

Q. Did you ever see a collection of Indian curios that Mr. Deslions had? A. I saw a large number of Indian curiosities that he had, yes.

Q. What experience have you in the knowledge
4786 of that subject? A. I have been seeing Indians for more than thirty years, living in camps with them and traveling with them and studying them, and I have seen a great many of these primitive implements, things that they used in old days, before they got the white men's implements and clothing and so on.

Q. Have you seen other collections of similar curios? A. Yes, I have seen quite a number of others.

Q. About how many, should you say? A. Oh, I don't know; I have seen collections or parts of col-

lections in the American Museum of Natural His- 4787
tory, the Smithsonian Institute of Washington, the National Museum, and a good many small private collections.

Q. Have you ever been in the business of collecting, yourself? A. No. That is to say, I have acquired things, but I never have been in the business of collecting commercially.

Q. But you have made a collection of your own? A. Yes, I have a number of things of my own.

Q. How did you acquire those? A. I acquired them at different times in the last twenty-five or thirty years, chiefly by buying from the Indians in camps or having them give me presents; sometimes 4788
by buying from dealers.

Q. Have you been familiar at all with sales of such articles whenever they have occurred? A. No, I can't say that I have.

Q. How did this collection of Mr. Deslions compare in extent with other private collections that you have seen?

Objected to as immaterial.

Commissioner: Allowed.

A. I should think that it was larger than any private collection that I have seen.

Q. Where did you see this collection? A. At 4789
some building on the south side of Washington Square; I don't remember the number.

Q. How did you see it; how was it shown? A. There were a large number of objects displayed on the walls of the room, and other objects were on tables; it is barely possible that there were two rooms, a small one off a large one; but I can't be sure of that; there were other objects in chests or trunks; but most of those things I never saw.

Q. Some of them you did see? A. Some of them I did see.

4790 Mr. Kopf: I ask that what the witness says about what he never saw be stricken out.

The Commissioner: Let the record stand as it is.

Mr. Kopf: I think it should be stricken out, because he is comparing it with another collection.

The Commissioner: I will let it stand.

The Witness: He opened his trunks, or some of them, to show me certain objects that he had in the trunks, that he especially valued or wished me to see, and I saw that in the trunks there were other things; but they were all wrapped up and piled together, and of course I don't know what they were.

4791 Q. What was the general character of the collection, the objects?

Objected to as immaterial and incompetent. Allowed.

A. Many of the objects that I saw were extremely interesting. There were others of course that had less interest for me; some that had very little interest. It is a long time ago, and I don't profess to give very great detail.

Q. But still what was the kind of objects that you remember to have seen? A. Many of the things were very desirable things; such things as shields
4792 and painted Buffalo robes, Buffalo skins; and there were two horn bows there that greatly interested me. I remember that there were some pipes which were reported to have come, to have been collected in the thirties, way up on the Missouri River.

Mr. Kopf: I object to what was reported.

The Commissioner: I will let the description stand as it is.

The Witness: The things were ancient, of course, seventy years old perhaps, or near that, and of a

kind that at the present day absolutely do not 4793
exist, in my belief. Those things were extremely interesting to me.

Q. Could such a collection as that be duplicated to-day?

Mr. Kopf: I object as immaterial and incompetent.

The Commissioner: It is allowed.

A. I don't think it could; in fact, I am positive that it couldn't.

Q. What is the reason of that? A. Those things have passed out of existence. They have either passed into the hands of museums or private collec- 4794
tors, or have been lost or worn out or broken up; they don't exist to-day. I don't suppose that it would be possible to go out, for example, here in New York and buy a Buffalo robe, to say nothing of a painted robe, a robe with photographs on the flesh side of the skin, the side that doesn't have the hair on.

Q. When did you see this collection? A. I can't tell; I should think it was four or five years ago.

Q. But it was in Washington Square? A. It was in Washington Square, on the south side.

Q. Do you remember to have seen in that collection any photos of Indians? 4795

Mr. Kopf: I object as leading.

The Commissioner: It is allowed:

A. I don't recall them, no.

Q. You have seen photos of Indians, have you not? A. Yes.

Q. What, in your estimate, would be the value of those, assuming that Mr. Deslions had 500 photos of Indians, many of them old and that could not be duplicated; what would you say would be the fair value of such photos?

4796 Mr. Kopf: I object; he has already said that he had not seen the photos, and unless he has he is not able to say what the value of those or similar to those is.

The Commissioner: I don't think the answer, as the question is put, would give me any assistance. It is too general.

Q. You have seen photos of Indians where duplicates have been lost, that were taken years ago? A. Yes.

Q. Do you know, generally, what the value of them would be? A. No, I don't know what the value would be. I should have no means of saying
4797 what the value would be; I don't know.

Q. Did you never buy any photos of that kind, or get any photos of that kind? A. Yes, I have bought them.

Q. When? A. Ten or a dozen years ago; I suppose I paid fifty cents apiece for them, or something of that kind.

Q. They would not lessen in value since that time? A. Certainly not; they would be more valuable.

Q. Very much more valuable? A. Undoubtedly.

Q. If Mr. Deslions had such a number of those photos would you say that so many of those ought
4798 to be worth in the market as much as those you bought years ago?

Objected to as immaterial and incompetent; there is no evidence that the photos couldn't be duplicated.

Mr. Benedict: Oh, yes, there is; I will read it to you:

"Q. Could those photos have been dupli-
"cated? A. No, sir, because most of them,

"if not all the plates, were destroyed at the 4799
"time. It was a great many years ago."

Mr. Haldane: You are asking for the value of the whole collection, and of course the photographs of a certain notorious chief might be worth more than a photograph of some unknown Indian. There is no criterion there for the value of a collection.

The Commissioner: Mr. Benedict is searching for something that would be a guide to me to fix a value on something that has been destroyed. The question is allowed.

Q. (Repeated.) If Mr. Deslions had such a number of those photos would you say that so many of 4800
those ought to be worth in the market as much as those you bought y[illegible] ago? A. I should say so; it is mere belief, of c[illegible]rse.

Q. If the fact was that there were autographs on them would that tend to increase their value?

Mr. Kopf: I object; there is no evidence of such a thing.

The Commissioner: I think Mr. Deslions testified that some had autographs. Allowed; but how many? The witness has not said how many there were.

A. Autographs would unquestionably increase 4801
the value.

Q. Do you remember to have seen in the collection any Indian medals? A. I am very vague about it; I don't know, but I can't say positively that I did.

Q. Assuming that there were medals there, as Mr. Deslions testifies, given to the Indians by Presidents of the United States, and George II. of

4802 England, what would you say such medals as that were worth?

Objected to. The witness is not qualified to express an opinion on that subject.

The Commissioner: I don't think he is.

Q. Have you any knowledge on the subject of the value of medals of that kind? A. I have seen a great many medals; I have gotten hold of one or two, and am very anxious to get hold of others; I know what I would pay for medals.

Q. Is that based on any knowledge of other sales or prices asked? A. I don't think it is, no.

4803 Q. I thought you said you had tried to get medals. A. I have, yes.

Q. In that haven't you found what prices were asked for medals?

Objected to as leading. Allowed.

A. Yes, I have found that such medals were usually too valuable for me to purchase.

Q. I repeat the question as to what would be the value of ten or twelve medals of that kind I have spoken of?

Objected to as incompetent, because the witness didn't see the medals.

4804

Mr. Kopf: I hope you don't consider that is a description of Indian medals.

The Commissioner: The witness is trying to prove the value of property that was destroyed in the collision.

Mr. Kopf: But you remember at the last hearing Mr. Deslions was to bring a list describing the articles that he lost. We stopped our cross-examination with the promise that that list would be brought; and we have no such description.

The Commissioner: The question is allowed.

A. The value of the medals would depend very largely upon their age; you can get a medal of Jefferson, or one of the early Presidents, or photographs, and a medal of one of the English kings, and of course it would be very valuable; it would be worth thirty or forty or fifty dollars, or perhaps considerably more; if you come down to the time of Grant it would be very much less. 4805

Q. I think you said you remember to have seen some Indian pipes? A. Yes, a good many.

Q. What knowledge, if any, have you with reference to the value of Indian pipes?

Objected to unless it is confined to the market value; the claimant has testified that all such articles have a market value. 4806

The Commissioner: We want to find out from the witness what knowledge he has. The question is allowed.

A. Those pipes have just as many different values as white men's pipes would have; some are cheap and some are dear. I bought a pipe for a friend a few weeks ago, or two or three months ago——

Mr. Haldane: Wait a moment. I object to that.

The Commissioner. You can't testify as to that. 4807

Q. Did you answer the question fully? Some are cheap and some are dear, you say? A. Yes.

Q. I show you a photograph of a lot of pipes——

Mr. Kopf: I object to the witness using that photograph in the present state of the proof.

Objection overruled.

Q. (Continued.) How does your memory, with reference to the pipes that you saw, compare with

4808 that photograph? A. I recognize here a number of Indian pipes that I saw in that collection.

Same objection and ruling.

Q. Do you remember seeing any with eagle feathers? A. Yes, distinctly.

Q. And any embroidered with porcupine?

Objected to as leading; everything that the witness is asked whether he saw is suggested to him in advance. Objection overruled.

Mr. Kopf: He says that he saw the collection and he is ready to testify to what he saw.

4809 The Commissioner: I think it would be better to ask whether there are any pipes that he remembers. Ask him to point out what he saw.

Q. Can you point out any on that photograph that you saw? A. Undoubtedly; I recall—I don't know how to identify them, but here is one that evidently has porcupine quill-work on the stem, and perhaps a scalp—at all events some hair hanging down from it.

Mr. Haldane asks that the pipes be identified.

Witness marks the pipes as to which he has

4810 just been testifying; the first that he recognizes as No. 1, the second as No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, and states that those are all the pipes that he distinctly recalls.

Q. Assuming that Mr. Deslions had about 300 pipes in the collection, of which those are a part, what would you say was the fair value for them?

Objected to as incompetent, no foundation having been laid for an expression of opinion by this witness. Objection sustained.

Q. What value would you put on those that you have marked? 4811

Same objection. Objection overruled.

A. It is exceedingly difficult to say what the market value is of a thing that you can't go out and buy.

Q. We understand that——

Mr. Kopf: I move to strike out the answer as not responsive.

Motion denied.

Mr. Haldane: Is it the market value?

The Commissioner: He is asking as to the value of those articles. 4812

Mr. Haldane: The market value; we don't want any room for speculation in the minds of the witness. This is the market value, and we insist upon that because of the frank statement made by the claimant that all this stuff has a market value. We insist that the witness hasn't shown himself qualified to give an opinion as to the market value.

The Commissioner: I will take the witness's ideas as to the value.

A. This is rather a difficult position, because while I remember these pipes as things I have seen, I don't remember details about that. I think, for example, this upper pipe, No. 1, is something that might be worth $25 or $30 or $40. No. 2 would be worth $15 or $20. No. 3 would very likely be worth $75, possibly more; it is evidently a medicine pipe stem with its bowl, and it might be worth a very large sum of money to a private collector, or to a museum. No. 4 is a less valuable pipe; perhaps it would be worth $10 or $15. No. 5, on the other hand, would be worth a very large sum of money I 4813

4814 should think; it is apparently one of the old pipes and couldn't be reproduced, or got now, at any price from anybody. I have no doubt you could find people who would be willing to pay a hundred dollars or perhaps more. No. 6 is less valuable—$10 or $15. No. 7 is worth, I should think, $25 or $30 or $40.

Q. From what you see of this photograph and what you saw of the pipes themselves, can you give us a fair estimate of what a collection of 300 such pipes would be worth?

Objected to as incompetent, no foundation being laid.

4815

The Commissioner: I will hear the witness's answer.

A. No, sir.

Q. Can you give us any idea of what it would cost to buy any such set of pipes?

Objected to as not the proper measure of damages, and as incompetent.

The Commissioner: I will hear the witness's answer there also.

Q. Assuming there were 300? A. I should think quite a number of thousand dollars. But I couldn't
4816 give it any nearer than that.

Mr. Haldane moves to strike out the answer as too indefinite.

Mr. Benedict: I think it is entitled to stay there in relation to other evidence.

The Commissioner: I can't say now, but I will let it stand for the present.

Q. Could such a collection of pipes be found anywhere, for sale?

Objected to as immaterial and incompetent. Allowed.

A. No, sir. 4817

Q. Do you remember to have noticed, in this collection, arrow heads?

Same objection, and as leading. Objection overruled.

A. I don't remember particularly to have noticed arrow heads, no.

Q. Did you ever buy or sell any arrow heads? A. I have bought arrow heads from time to time.

Q. What do you say that five or six hundred arrow heads, from Oregon, very small points, made from obsidian and other stone, would be a fair price for them, apiece?

4818

Objected to as incompetent.

A. I don't know; those are articles that are in the market and you can find out by going to the proper people what they are worth.

Q. You have bought them yourself? A. I have bought an occasional stone arrow head.

Q. What have you paid for it? A. I haven't the least idea whether I paid ten or fifty cents; they are simply things that I have picked up.

Q. Do you remember noticing any Indian dolls in the collection?

Same objection and ruling.

4819

A. I do not remember.

Q. Have you ever seen any Indian dolls? A. Yes.

Q. Representing different characters. A. Yes.

Q. Supposing that there was in that collection a collection of ten Indian dolls, some made by Sitting Bull and his wife and some representing Sitting Bull and his wife; what would you say was the fair estimate for those?

Objected to as incompetent. Objection overruled.

4820 A. I can't intelligently answer that question; I can say what I have paid for certain dolls, of which I bought several. I paid five dollars——

Objected to as incompetent.

The Commissioner: I don't care what the witness paid.

Q. You have bought Indian dolls? A. I have bought Indian dolls.

Q. But have you ever bought any that were made by Sitting Bull and his wife? A. No.

Q. Or that represented Sitting Bull and his wife? A. Neither.

4821 Q. The fact that they were made by him or represented him would increase the value of the article, would it not? A. Unquestionably. Those things made by that man would have a special value for certain Indian collectors.

Q. Can you put any value that you think such a doll would be worth, to collectors?

Objected to as incompetent.

The Commissioner: I will hear what the witness says.

A. No, I can't.

Q. What would you give for such a doll as that?

4822

Objected to as immaterial. Objection sustained.

Q. Do you know the value of books in reference to Indian matters? A. I have some knowledge of them.

Q. Do you know Schoolcraft's works? A. Yes.

Q. What is the value of them?

Objected to as incompetent.

Q. Do you know anything of their value? A. 4823
Two or three years ago they were worth $50 for the set.

Q. Do you know McKinney & Hall? A. Yes.

Q. What would that be worth?

Same objection.

A. I have never bought a set, but I have seen them advertised from $100 to $50 and $75.

Mr. Haldane moves to strike out the answer as not responsive.

The Commissioner: I would rather have Mr. Grinnell's opinion than that of dealers. I know 4824
him to have been studying on this one topic for twenty or thirty years back, on the value of books and articles of that kind; his evidence is good.

Q. Do you know George Catlin's portfolio of Indians, published in London nearly a hundred years ago? A. Yes.

Q. What about the value of that?

Same objection and ruling.

Q. What do you say that would be worth now? A. $45.

Mr. Kopf: I move to strike out the answer.

4825

No ruling.

Q. Has there been any change in value during the last fifteen years? A. Those things increase slightly in value year by year.

Q. Do you know any book, a rare book, published in reference to Indian matters, by a missionary? I can't give you the name; it is written by a Frenchman in French. A. There are a number of books that have been published on aborigines, by Frenchmen. Petitot, do you mean?

4826 Q. I mean any missionary. We will have to get that name somewhere else. I turn over to Indian masks. Do you know anything about Indian masks of wood? A. Something about them, yes.

Q. What knowledge have you of them. A. Used by the northwest coast tribes very largely in their ceremonials.

Q. What do you say ten Indian masks of wood would be worth?

Objected to that the witness isn't shown competent to testify, and no foundation has been laid.

4827 Q. Did you ever buy any? A. Yes; a few a great many years ago. I haven't the least idea about what I paid for them at all.

Q. What would be the value of ten Indian masks made of wood, assuming that there were such in this collection?

Objected to. Objection sustained.

Q. Have you known of any sale of Indian masks, since those that you bought yourself? A. No, I think not.

Q. Do you remember to have seen any Indian rattles? A. Yes.

Q. In this collection? A. Yes.

4828 Q. Have you any knowledge of the value of those? A. They are very highly prized by the Indians, who don't readily part with them.

Q. Are they difficult to obtain. A. Yes.

Q. Rare? A. Yes.

Q. What would you say would be a fair price for an Indian rattle?

Objected to.

Q. Have you any knowledge with reference to their value here, anywhere, among collectors? A. No, I think not.

Q. Have you ever tried to buy any? A. Yes; but 4829
not here in the East.

Q. Have you any among your collection? A. Yes, a good many.

Q. You have bought those, I understand you to say? A. Bought some of them; stolen some of them, and some were given to me.

Q. On that what would you say would be a fair value for an Indian rattle?

Objected to as the witness is incompetent. Objection sustained.

Q. What would you expect to pay for such a rattle among the Indians, if it was to be obtained?
4830

Objected to as immaterial. Objection sustained.

Q. Do you remember any Indian drums? A. I don't remember any Indian drums, no.

Q. You have seen Indian drums often? A. Yes.

Q. Have you got any yourself? A. Yes.

Q. Seen them in other collections? A. Yes.

Q. Do your know anything about the value of them, ceremonial drums? Are you able to put, from your knowledge, a fair value on them?

Objected to as a conclusion. Let the witness tell the facts.

4831

The Commissioner: Let him answer the first question first.

A. I don't think I know anything of their value. I know that they are hard to get and that they are desirable, and if one went out to buy them of the Indians he would have to pay a large price; as to how many dollars it would be, I don't know.

Q. What would you sell one of your's for?

Objected to as immaterial. Objection sustained.

4832 Q. If one were offered to you to buy what would you expect to pay for a fair price for it?

Same objection and ruling.

Q. Do you remember seeing any stone war clubs? A. Yes, quite a number.

Q. Have you any of those? A. Yes, I have.

Q. You have seen those elsewhere? A. Yes.

Q. Do you know anything about the value or cost or price of them, or anything? A. A good many different prices for different kinds. They are not like eggs; some are valuable and some are not valuable.

4833 Q. What price would you mean by "valuable"? A. I should say some were worth $15 or $20 or $25, and others only worth two or three dollars.

Q. Do you remember noticing any tomahawks, steel or stone? A. Yes.

Q. Have you any knowledge of tomahawks? A. Yes, I have.

Q. What do you say would be the fair value of a dozen steel tomahawks and two stone tomahawks?

Objected to as incompetent; the witness is not qualified to give an opinion.

4834 The Commissioner: He has testified that he knew the value. Allowed.

A. They are hard to obtain. I suppose they are worth $25 or $30 or $40; it depends on the character of the implement.

Q. And largely on the antiquity? A. Yes.

Q. That would still further increase the price? A. Oh, yes; a modern steel tomahawk is nothing; it wouldn't be worth to me anything, nor to any collector.

Q. But stone tomahawks would be very differ-

ent. They wouldn't be modern? A. No. Did I understand that some were stone? 4835

Q. Yes. A. They would be still more valuable and more desirable.

Q. What value would you put on them?

Objected to because the articles are not identified. Allowed.

A. They would be still more valuable.

Q. How much more valuable would a stone tomahawk be? A. It depends on the implement, but I should think it would be worth considerably more.

4836

Objection renewed, because it depends on the implement, and the witness has had no description.

The Commissioner: I will allow it to stand.

Q. Do you remember seeing any Indian shields? A. Yes, I remember seeing a number of Indian shields.

Q. Are you familiar with Indian shields? A. I have seen a good many.

Q. Did you ever see any made of Buffalo hide? A. Yes.

Q. How about the scarcity of such shields as that? 4837

Objected to as immaterial.

The Commissioner: I think it is proper.

A. They are extremely scarce.

Q. What part of the hide were they made of? A. The neck of the bull; the fore part of the animal's hide.

Q. There are no more Buffalos to furnish any such hides, are there? A. No more.

1618

4838 Q. What would an Indian shield made of Buffalo hide be fairly worth?

Objected to as incompetent. Objection sustained.

Q. What do you know about the value of such Buffalo shields? A. Seeing them and seeing their present lack of existence, and knowing that they cannot be had any more; that gives me my idea of their value. If a man wants a Buffalo hide shield he can't get one now, because they don't exist.

Q. If one was offered what would be a fair price?

4839 Objected to on the ground that the answer of the witness shows he is not competent to testify. Objection sustained.

Q. What, if anything, do you know about any price that has been paid for Buffalo shields? A. I don't think I know anything.

Q. Did you never know of one being bought? A. I don't think so—yes, I have known of one being bought.

Q. When was that? A. That was some years ago; I purchased it myself.

Q. Here in New York? A. No.

Q. Where did you buy it? A. In southern Montana, in the camp of the northern Cheyennes.

4840 Q. Is that all you know with reference to the price or cost of any such thing as that? A. That is all I know of the buying and selling of the shields —yes, I know, or I believe I know, of one or two shields having been sold, but I don't know anything about the price.

Q. Can you tell us where or when or by whom? A. Here in New York; bought by a friend of mine; but I never heard anything as to price.

Q. Can you give us his name? A. His name is White; John J. White, Jr.

Q. Did you notice any war bonnets in this col- 4841
lection? A. Yes.

Q. What knowledge, if anything, have you with reference to war bonnets? A. I have seen a great many.

Q. Did you ever buy any? A. I never bought any.

Q. Ever known of any being bought or sold? A. I sold one once.

Q. Do you remember what price? A. Yes.

Q. When was that sale? A. I should think it was two or three years ago; perhaps longer.

Q. What was the price paid for it?

Objected to as immaterial. Objection sus- 4842
tained.

Q. I show you a photograph, Exhibit 4, of a war bonnet. Do you remember seeing that war bonnet in this collection? A. I can't be positive whether I saw this particular one; they look very much alike.

Q. How did the one that you sold compare in appearance with that? A. The one I sold wasn't nearly so handsome as this one.

Q. What was the price that was paid for that one that you did sell?

Objected to as immaterial. Objection sus- 4843
tained.

The Witness: I can say something about war bonnets in general.

Q. What do you say as to the value of war bonnets in general, for collections? A. They are regarded very highly by most collectors, and there is a certain way of fixing their value.

Q. What way is that? A. That is by counting the eagle feathers on them, which have a certain value. There is, in addition, other ornamentation;

4844 a certain labor may pile up the value; eagle feathers have a definite value.

Q. Do you know what that is? A. Yes.

Q. What is it? A. Fifty cents apiece.

Q. And other articles, you say, have also different values. Do you know whether scalp locks have any definite value as an ornamentation? A. They are very highly prized.

Q. You speak of eagle feathers that you say have a value of so much apiece; would that include eagle feathers where the quills were ornamented with porcupine quills? A. No; unornamented.

Q. Ornamentation would very largely increase
4845 their value, would it not? A. Unquestionably.

Q. Looking at that photograph, do you say that those eagle feathers appear to be embroidered? A. They seem to be bound with porcupine quills, and to be ornamented in other ways.

Q. How as to the size and fineness of the feathers? A. They seem to be very fine feathers; what they call a war eagle.

Q. Can you give us what would be a fair value for such a war bonnet as that?

Objected to as incompetent, the witness not having laid a foundation for testifying as an expert on the subject.

4846 The Commissioner: I think he has laid some foundation. I will take his answer.

Mr. Haldane: He has not bought or sold one single bonnet.

The Witness: I have sold one single bonnet.

A. It is very hard to tell from the photograph; but I should think a war bonnet of that kind would be worth $80 perhaps.

Q. Did you notice, in this collection, any war shirts of buckskin? A. Yes, there were a good many of those.

Q. Did you notice whether they were embroid- 4847
ered or trimmed? A. Yes, I have a distinct recollection that some of them were embroidered with porcupine quills and trimmed with scalps.

Q. Referring to this picture again, Exhibit 4, and taking the following description, that it is "a war bonnet made of eagle feathers, trimmed with porcupine quills, the center trimmed with ermine tails, several scalps attached to the bonnet; on both sides of the bonnet is a scalp." Would these elements that I have just read to you increase the value? A. Over the price I set, yes; scalps might make it worth twice as much, but it would depend on the size of the scalps, and how they were put on, 4848
whether the flesh side was embroidered or painted.

Q. What knowledge have you as to the value of war shirts? A. I have priced them a number of times among the Indians.

Q. Have you any knowledge here as to their value? A. No definite knowledge of them here.

Q. Their value here would be less or greater than among Indians? A. It would be very much greater.

Q. What would be a fair value, or what price would you fairly expect to pay for a war shirt of buckskin, embroidered with porcupine quills, and trimmed with scalp locks; among the Indians?

Objected to as immaterial. Allowed. 4849

A. I don't think you could get it for less than a hundred dollars from the Indians. You might have to pay more, much more.

Q. Do you remember seeing any ghost shirts there? A. Yes, I do.

Q. Do you know anything about the value of those? A. Nothing.

Q. Do you know that they were supposed to be bullet-proof? A. Yes, I know all that.

Q. You know what they were used for? A. Yes;

4850 they were given by the prophets and priests to those who believed in the Ghost Dance religion, and persons who received them believed that wearing them they would be safe from attacks of the enemy; that the balls wouldn't go through the shirts.

Q. Did you ever know of the purchase or sale of a ghost shirt? A. No, I don't think so; I have had them offered to me from time to time.

Q. What price have you had them offered to you for?

Objected to as incompetent and immaterial. Allowed.

4851 A. I don't remember.

Q. Their value is not in the material that they are made of, is it? A. Not at all.

Q. What does their value consist of? A. It comes from the association with the Ghost Dance religion, which led to various outbreaks. There are a great many white collectors who like to have them as a record of that time.

Q. Are they not valuable in collections? A. They are, to people who want these things.

Q. And there are a great many people who want that kind of thing, are there not? A. Yes.

Q. Did you see any scalps there? A. Yes.

4852 Q. Do you know anything about the price of scalps? A. Very little; I have one myself.

Q. What knowledge have you? A. In these present days a scalp would be worth from——

Objected to that the witness has not laid a foundation.

The Commissioner: He says he has no knowledge of the value.

Q. Have you known anything of purchases or sales of scalps? A. I don't think so.

Q. Did you ever buy any yourself? A. No.

Q. Are they more scarce than they used to be? 4853
A. Yes, in their prepared form.

Q. Does that scarcity increase their value? A. Very much.

Q. Mr. Deslions has said that a scalp was worth on an average of $100 apiece; what would you say on that point?

Objected to. Objection sustained.

Q. Did you notice any leggings there? A. Yes, there were leggings there.

Q. Do you know anything about the value of leggings? A. I know that they are desirable; old time leggings are about as desirable as old time 4854
shirts.

Q. Have you got knowledge enough to put a value on a pair of leggings?

Objected to that the witness can't answer that question.

A. I can fairly say that I have knowledge of the value of leggings.

Q. What do you say was the fair value of a pair of leggings then? A. That would depend upon the pair of leggings; if I saw it I could tell.

Q. Suppose it was embroidered with porcupine? A. A pair of leggings embroidered with porcupine would be worth $50 and perhaps more. 4855

Q. And if embroidered with beads? A. Not so valuable in my view.

Q. Do you remember noticing any moccasins? A. There were moccasins there; I don't remember any specific pairs of moccasins.

Q. What knowledge have you with reference to moccasins? A. I have seen a great many, and bought some.

Q. Have you known of purchases of moccasins? A. Yes.

4856 Q. What would be a fair value for a pair of moccasins?

Objected to that the witness has stated that he doesn't remember the particular moccasins that the claimant had.

A. They range up and down.

Q. Give us the range.

Objected to as incompetent. Allowed.

A. The value ranges from a dollar and a half up to ten dollars, as to the work and beads, and all the details. Old moccasins, handsomely embroidered
4857 with porcupine quills, might be worth fifteen or twenty dollars.

The examination of this witness is suspended, for the purpose of examination of three other witnesses, who will take but a short time.

JOACHIM DEVOLUY, being duly sworn and examined as a witness for Deslions, testifies:

By Mr. Benedict:

Q. What is your business? A. Expressman.

Q. How long have you been in that business? A. Five years.

4858 Q. Do you remember taking some trunks for Mr. Deslions to the *Bourgogne?* A. Yes, sir.

Q. How many trunks did you take? A. I don't remember exactly; but a dozen or something like that.

Q. Where did you get them? A. From Washington Square — Union Square — yes, Washington Square.

Q. What day did you take them; the day the steamer sailed, or the day before? A. I think it

was Saturday; I know I took them the first thing 4859
in the morning, about six o'clock.

Q. How did you take them down to the steamer? A. To the dock; I took them with two wagons; one express wagon and one truck.

Q. How many men did you have to help you? A. Three men.

Q. Why did you have to have three men? A. Because they were very heavy trunks; I couldn't lift them without two or three men with me.

Q. When you got them to the dock what did you do with them? A. I left them at the dock.

Q. Left them on the dock? A. Yes, sir.

Q. Did you put them in charge of anybody? A. 4860
No, because the men up on the dock told me to put the trunks right there.

Q. Where did you get the trunks themselves? A. I saw the trunks around on the floor, and some were open.

Q. Who was there when you got there? A. I saw some curios.

Q. Those were in the trunks? A. Yes, I helped Mr. Deslions to fix up the trunks myself, with some ropes.

Q. Was there anybody there besides Mr. Deslions? A. His wife was there.

Q. Who did you get the express business from? 4861
A. Toussaint Lagier.

Q. Had you ever carried those trunks before, yourself? A. No, sir.

CROSS-EXAMINED BY MR. HALDANE:

Q. What time in the morning did you get to Mr. Deslions' house? A. Near about six o'clock in the morning.

Q. Who did you see there? A. I saw Mr. Deslions and his wife; I don't remember exactly, but some children.

4862 Q. How many children? A. I couldn't tell you exactly; I remember seeing one.

Q. Where did you see Mr. Deslions and his wife; in what part of the house? A. In the second floor; second or top floor; up on his floor.

Q. Did you ring the bell? A. Yes, sir.

Q. Who answered the bell? A. The door was opened from upstairs, I think; I don't remember exactly, but I think so.

Q. Who told you to go there? A. Mr. Deslions himself.

Q. When? A. Two or three days before.

Q. Where were you when he told you? A. In my
4863 office.

Q. Where was that? A. 175 West Twenty-sixth street.

Q. At the same office as Mr. Lagier? A. Yes, sir.

Q. Were you working for him? A. No, I never worked for him; I bought the business from him.

Q. When you got upstairs to Mr. Deslions' apartment where were these trunks that you afterwards took away? A. Some were in front and in the middle, and in the kitchen, too; I don't remember exactly, but I took the trunks from the whole floor.

Q. Were they all on that floor? A. Yes.

Q. Weren't there some down in the cellar? A. He did tell me something about one in the cellar;
4864 I think the men took it; I don't remember exactly, because it is a long time ago.

Q. Did you give him a receipt for the trunks? A. No, sir, because he knows me.

Q. Did you make any entry in any book or on any paper showing how many trunks you took away? A. That time I had a book; I have no book now.

Q. What became of the book that you made the entry in? A. That book is thrown away a long time ago; because after that I took a partner and didn't keep the book any more.

Q. What curios did you see that morning? A. 4865
I can't tell exactly; I saw so many things; I am not in that business; and I can't tell exactly; there were so many things.

Q. What did they look like? A. They looked like so many different things; I know one was a big thing like this (indicating) I couldn't spell the name.

Q. You saw a number of things? A. Oh, yes, but I don't remember what they were.

Q. How long were you looking at them? A. Not long, because I had to do my work.

Q. How long? A. I was there with the trunks nearly an hour and a half or two hours, or some- 4866
thing like that.

Q. So it was about half past seven when you left there? A. It may be more than that.

Q. You got there at six, didn't you? A. Yes.

Q. And it was later than half past seven when you left? A. Yes.

Q. What time did you leave there? A. I couldn't tell you; it was near eight o'clock, or something like that.

Q. What did you do with these curios and funny things that you saw; did you do anything with them? A. Mr. Deslions——

Q. Did you do anything with them? A. No. 4867

Q. Did you touch them? A. No; I helped Mr. Deslions to tie up the trunks; that is all.

Q. Did you help him put them in the trunks? A. Yes.

Q. Did you help him pack? A. Only two or three —I don't remember.

Q. Were any of the trunks corded or strapped? A. I closed them myself; I helped him to close it.

Q. When you got there were any of them corded or strapped? A. I brought the trunks down.

Q. Did they have a rope around them? A. Yes.

4868 Q. Who put it around them? A. Myself and Deslions and the two or three men that I had with me.

Q. You helped to put the rope around all the trunks that were there? A. No; four or five may be; I don't remember.

Q. You are quite sure, are you, that Mr. Deslions was there when you came there for those trunks? A. Yes, sir.

Q. Will you swear to that? A. Yes, sir.

Q. Was he there when you left with them? A. Yes, sir.

Q. Did he go with you to the dock? A. I don't think so; no, I went by myself with three men.

4869 Q. Did you go to the dock yourself? A. Yes, sir.

Q. Don't you know whether Mr. Deslions went? A. I don't know.

Q. How did you know who to deliver these trunks to if he didn't go with you? A. He told me to bring the trunks to the French Line.

Q. What did he tell you to do with them? A. To put them up in the third class till he saw what he was going to do with them, take a second-class ticket or a third-class ticket.

Q. Are you sure he said that on Saturday morning, or was it Sunday morning? A. I couldn't tell you exactly; I don't remember.

4870 Q. Don't you know whether he took these trunks down on the day the boat sailed, or the day before? A. I don't know; I know I took them at six o'clock in the morning, but I couldn't say which day.

Q. Didn't you say a little while ago that you took them down on Saturday? A. I don't know.

Q. Didn't you say Saturday a little while ago? A. No, I said six o'clock in the morning; but I didn't say what day.

Q. Haven't you any way of telling what day of the week you took them down? A. I don't remem-

ber the day; I know it was in the morning, because 4871
I was up early, but I don't remember the day.

Q. Didn't you testify that you took these trunks down on "Samedi"? A. I am sure I put them on that boat, but I couldn't tell you exactly the day.

Q. Then why did you say "Samedi" when you were being asked about it? A. I can't tell you exactly whether it was on Saturday; but I know it was in the morning.

Q. How many trunks did you take? A. Twelve or thirteen or fourteen may be; I couldn't tell you exactly.

Q. How big were they? A. Big trunks.

Q. All of them? A. Yes; some weighed four or 4872
five hundred.

Q. Were they all about the same size? A. No, some were more bigger than the others.

Q. How much did you charge him for hauling them down to the French Line? A. I think it was seven dollars.

Q. How many of the trunks were on the truck and how many were on the express wagon? A. I couldn't tell you now; I know I loaded two wagons, but I couldn't tell you which.

Q. How many horses were on the express wagon? A. One.

Q. And how many on the truck? A. One. 4873

Q. Was it a single truck? A. It was either double and singie; that time I had only two horses.

Q. Do you know how many pounds those trunks weighed? A. Well, I can't tell you exactly; but there were about seven or eight, and it took three men to lift them up and carry them downstairs.

Q. How many tons did the whole outfit weigh? A. I couldn't tell you how many tons.

Q. Who did you see when you got to the French Line pier? A. I saw the man that received third-class baggage.

4874 Q. How did you know he was the man that received the third-class baggage? A. Because I knew him at that time.

Q. What was his name? A. I couldn't tell you; but I know him very well; I think he is there now; I am not sure, but I knew him.

Q. Did you go inside the pier with your wagons? A. Yes.

Q. Whereabouts did you unload the trunks? A. On the back of the dock.

Q. Do you mean the end of the dock next the water? A. I mean on the dock by the third-class baggage.

4875 Q. You went as far as you could go on the dock? A. Yes, on my left side.

Q. And unloaded them at the end of the dock? A. Yes, sir.

Q. Did you get any receipt for them? A. No, sir, they don't give any receipt.

Q. Did you give any instructions to any one about them? A. No; they said they would be all right.

Q. You just unloaded them, and left? A. Yes; that is what the baggage-master told me to do.

Q. Did you notice any other freight lying on the pier at the place where you unloaded these trunks?

4876 Objected to as immaterial.

A. No.

Q. Did you see any baggage there where you unloaded these trunks?

Objected to as immaterial.

A. Certainly there was baggage at that time.

Q. But no freight? A. I don't remember exactly; I did see some freight on the dock.

Q. Which side of Washington Square did you

say you went to get these trunks? A. On the down- 4877
town side.

Q. The south side? A. Yes, sir.

Q. You are sure of that, are you? A. Yes, sir, I am sure.

Q. What number was it? A. I couldn't tell you exactly, but I know the house; 40—I don't remember exactly.

Q. In the forties, was it, forty something.

Mr. Benedict: Didn't he say 60?

Q. You know there isn't any 60 on the south side of Washington Square? A. I know the place very well, but I don't remember the number; it was the 4878
down-town side.

Q. Did Mr. Deslions tell you anything about whether these trunks were to go as freight or as baggage? A. I think he said baggage. He said they were to go with his wife.

Q. Where is your place of business now? A. The same place.

Q. Where is Mr. Lagier's place of business? A. He has no business at all now; he is dead.

Q. Supposing Mr. Deslions said that there were only eight or nine trunks; would that make any difference in your recollection of the number of trunks there were?

4879

Objected to as immaterial. Allowed.

A. I don't remember what he said; but he told me to be up there early.

Q. No, no; supposing he says that there were only eight or nine trunks; would that make any difference in your recollection about the number? A. I don't understand what you mean.

Q. You said you thought there were a dozen or fourteen trunks? A. Yes.

Q. Suppose Mr. Deslions says there were only

4880 eight or nine. What then? A. There were more than that, I know.

Q. Then he was wrong? A. There were more than that; because they were fifty cents apiece, and it came to six dollars and up.

Q. Is that what he paid you, six dollars? A. Yes, and then more, he said, That will be all right; six dollars would be enough; that is what he said.

REDIRECT-EXAMINATION BY MR. BENEDICT:

Q. Did these two men that are here help you? A. Yes.

Q. Were they in your employ at that time? A.
4881 Yes.

Q. Did you do anything towards putting the curios into the trunks? A. Yes, sir.

Q. What did you put in? A. I can't tell you the names.

Q. How many things did you put in? A. Many little things.

Q. How many? Ten? A. More than that; I helped him to put so many things in the trunks.

Q. In how many trunks; more than one? A. In two or three trunks; they were near ready, but there were some out.

Q. After that you helped close them, and put the
4882 ropes around them? A. Yes, sir.

RECROSS-EXAMINATION BY MR. HALDANE:

Q. Were Mr. Deslions and his wife up and dressed when you got there? A. No, sir.

Q. Didn't they have their clothes on, ready to go out? A. Yes, they had clothes on.

Q. Did Mrs. Deslions have her hat and jacket on? A. No, she had not.

Q. Did Mr. Deslions have his overcoat on, ready to go? A. No, sir.

Q. You left them both there after you took the 4883
trunks away? A. Yes.

Q. You are sure of that? A. Yes.

JACQUES MULLER, being duly sworn and examined as a witness for Deslions, testifies:

By Mr Benedict:

Q. Were you in this last witness's employ? A. Yes, sir.

Q. Did you help carry these trunks of Mr. Deslions? A. Yes.

Q. Did you help him put them on the carts? A. 4884
Yes, sir.

Q. How many trunks were there in all? A. There were altogether about thirteen or fourteen pieces.

Q. Whose employ were you in before you went into Mr. Devoluy's employ? A. I was in Lagier's employ.

Q. While you were in his employ had you ever taken trunks for Mr. Deslions? A. Yes, sir.

Q. Where had you taken them from and to? A. The last time I took them from Washington Square to put them on the pier of the French Line.

Q. And before that? A. I moved them three times.

Q. Where from? A. The first time I moved them 4885
from Twenty-third street, between Sixth and Seventh avenues, over in the same street to another number in the same street; the second time I moved them I took them from Hancock street over to the country at Woodside, and the third time I took them from Woodside and brought them over to Washington Square.

Q. How many trunks did you take each time? A. About seven or eight trunks that time.

Q. Which time? A. The first time; six or eight trunks.

4886 Q. The second time? A. The second time the same.

Q. And the third time? A. The third time he got about thirteen or fourteen; I don't remember exactly.

Q. Which do you mean by the third? A. That was the last time.

Q. When you took them to Woodside how many were there? A. About six or seven trunks.

Q. What steamer did you take the trunks to? A. *La Bourgogne.*

CRSS-EXAMINED BY MR. HALDANE:

4887 Q. What year did you first move trunks for Mr. Deslions? A. Well, I don't know what year it was.

Q. How many years before the *Bourgogne* sailed did you first move any trunks for Mr. Deslions? A. You mean the first time I moved them?

Q. Yes? A. Oh, about seven years ago.

Q. Can't you give us the year? A. Seven or eight years ago the first time I moved them.

Q. Where did you move them from that time? A. The first time I took them from Twenty-third street between Sixth and Seventh avenues.

Q. Where did you move them to? A. In the same street, between Eighth and Ninth avenues.

4888 Q. Was that 1895 or 1896? A. I can't tell you exactly; it is about seven years, the first time.

Q. How long after that was it that you moved them from Twenty-third street to Hancock street? A. I can't say.

Q. Did you move them from Twenty-third street to Hancock street? A. No.

Q. How long after that was it that you moved them from Hancock street to Woodside? A. Well, it was about six years, or five years.

Q. Six years ago you mean? A. Yes.

Q. About a year after you moved them from 4889
Twenty-third street? A. Yes, about a year after.

Q. How many teams did you have, or wagons, to move these trunks to Woodside? A. Well, I got an express wagon and a truck; a double truck.

Q. What else did you move besides these trunks? A. I got an express wagon for the trunks and a truck for the furniture.

Q. How much furniture? A. I got a good load for two horses.

Q. And all the trunks were on the single wagon? A. All the trunks were on the single wagon.

Q. An express wagon? A. An express wagon.

Q. What time of the year was that when you 4890
moved them from Hancock street to Woodside? A. It was in the spring time, because they were going in the country; I don't know exactly what day.

Q. How long after you moved them to Woodside was it till you moved them back to Washington Square? A. About four months after.

Q. Did you move back the same property, apparently, that you took there? A. The same things, yes, sir.

Q. The same express load of trunks and the same double truck full of furniture? A. Yes, sir.

Q. How long was that before the *Bourgogne* sailed that you moved them back to Washington 4891
Square? The *Bourgogne* sailed in July, 1898? A. Yes.

Q. How long before that did you move Mr. Deslions back to Washington Square? A. I don't know exactly how long; I can't tell you.

Q. Was it the same year or the year before? A. No, I don't think it was the same year.

Q. Was it in the fall of the year before the *Bourgogne* sailed? A. I can't tell you exactly how long a time he was over there.

Q. Don't you know how long this furniture and

4892 these trunks were at Washington Square before you moved them again to the French Line pier? A. No, I don't know.

Q. When did you next see Mr. Deslions after you moved those trunks to the French Line pier? A. I saw him about two hours after.

Q. After the boat had sailed? A. Yes.

Q. Where was he? A. The boat was away.

Q. How long after you delivered these trunks at the pier was it that the boat sailed? A. Well, I don't know; I brought the baggage over there, and it was in the baggage room.

Q. What time? A. It was in the morning, about
4893 nine o'clock; eight or nine o'clock.

Q. What time did the boat sail? A. I think the boat went away about eleven or twelve o'clock.

Q. Did you stay there till the boat sailed? A. No.

Q. Didn't you say you saw Mr. Deslions about two hours after the boat had sailed? A. Yes.

Q. Where? A. I saw him in Twenty-sixth street; he came into the office.

Q. Whose office? A. The boss' office, 155 West Twenty-sixth street.

Q. Did you have any conversation with him then? A. No.

Q. When did you see him next after that? A.
4894 A long time after.

Q. How long after? A. Well, I don't know; about three weeks or four weeks after.

Q. Where did you see him the second time? A. I can't tell you.

Q. If you saw him why don't you remember where you saw him? A. I keep that in a book; I can't tell you where I saw him the second time; you ask me things; I can't tell you anything.

Q. You say you saw him about three weeks afterwards? A. Yes.

Q. If you saw him about three weeks afterwards,

why can't you tell us where you saw him? A. I told 4895
you I saw him in the office.

Q. Again? A. Yes.

Q. Did you have any talk with him that time? A. Yes, sir, he told me he lost his wife and children and everything.

Q. But he didn't tell you the first time? A. He didn't know the first time; two hours after.

Q. When was the next time you saw him? A. The next time I saw him—you ask me things I can't tell you.

Q. How many times have you seen Mr. Deslions since the *Bourgogne* sailed in 1898? A. I saw him one time after. 4896

Q. When was the last time you saw him before to-day? A. That was about a week ago.

Q. Where? A. Last week.

Q. Where were you? A. I was in my house.

Q. Where do you live? A. In 408 West Forty-eighth street.

Q. Did he come there to see you? A. Yes.

Q. Any one come with him? A. Yes.

Q. Who? A. He asked me if I would come here as a witness.

Q. Who came with him? A. He was alone.

Q. What did he say? A. He asked me if I remembered bringing the baggage over there, and I 4897
said yes.

Q. What else did he say to you? A. He didn't say anything; he asked me how much baggage I brought; that is all; if I remembered; that is what he asked me.

Q. What did he say? A. I said about thirteen or fourteen pieces.

Q. Did he tell you he didn't think there were so many pieces as that? A. No.

Q. Did he say anything to you about there being only eight or nine pieces? A. No.

4898 Q. How long ago was this? A. About a week ago.

Q. Did you communicate with him before that in any way? A. No.

Q. Do you know how he came to know where you lived? A. I haven't seen him for about three years.

Q. Do you know how he came to know where you lived? A. Well, I don't know who told him my address; I don't know how he found me.

Q. Was that all the conversation you had with him? A. That is all.

Q. You are quite sure nothing more was said? A. Nothing more.

4899 Q. And he turned around and left, did he? A. Yes.

Q. You haven't seen him since that until to-day? A. No.

Q. Did you see him down on the dock when you took these trunks down? A. No, he wasn't down there; there was me and the boss and that man there (indicating the next witness). I didn't see Mr. Deslions there.

Q. Are you quite sure of that? A. Yes, sir, I am sure.

Q. Who did you see down at the dock? A. Nobody; there was nobody down there.

4900 Q. What time was it when you left the pier? A. It was about half past nine or ten o'clock.

Q. Are you sure of that? A. I am sure.

Q. Who did you see at the house in Washington Square when you went to get these trunks? A. We were in the house.

Q. Who did you see there? A. Mr. Desloins and Mrs. Deslions and the children.

Q. How many children? A. There were two; two or three children.

Q. How big? A. Well, I don't know.

Q. Can't you describe them? A. No.

Q. Can't you tell whether there were fifteen or 4901
or five, or ten? A. There were some children there; I know the little girl was about four years, and a little boy, too.

Q. How old did the boy look to be? A. About two years.

Q. How old did the oldest child look to be? A. Three.

Q. I thought you said there was one four? A. Well, I saw about two or three children there; I didn't look for the children, I looked for the baggage; that was all.

Q. Did you hear these children speak to Mr. or Mrs. Deslions? A. No. 4902

Q. They didn't say a word all the time you were there? A. That is all.

Q. Did Mr. or Mrs. Deslions speak to them? A. To who?

Q. These children? A. Well, I don't know.

Q. What did you do while you were there, before you got the trunks on the wagon? A. The boss was over there about two hours before me, and helped pack the things up, and when I came after, I and the men carried everything down.

Q. What time did you get to the house at Washington Square? A. I was over there about half past seven or eight o'clock. 4903

Q. Did you stay until the wagons left? A. Yes, sir, I brought the things to the boat.

Q. What became of Mr. and Mrs. Deslions and the children? A. I don't know.

Q. Do you know whether you left them in the house? A. No; we left nothing in the house.

Q. Did they leave the house before you did? A. No.

Q. If they didn't leave the house before you left, then you left them in the house when you took the trunks away? A. Yes, they stayed in the house.

4904 Q. What else was in the house besides these trunks when you went there that morning? A. Well, I don't know; I think there was a bedstead and some chairs.

Q. What furniture was there? A. I don't know; I can't tell you.

Q. How many rooms did you have to go into to get these trunks? A. Four or five rooms.

Q. What was in there? A. Trunks and cases and everything in there.

Q. What furniture was there in the rooms? A. Chairs and lounges and bedstead may be.

Q. Some furniture in each room, was there? A.
4905 Yes.

Q. Were you in the kitchen? A. In the kitchen was the dishes and stuff; there was no furniture there, except a table and chairs.

Q. Did you notice whether the table had been set for breakfast? A. Yes.

Q. It had? A. I tell you there was a table and chairs and dishes; in the kitchen was everything that belonged to the kitchen; that is all; nothing else.

Q. Did you move the furniture from the house? A. No, I left everything there.

Q. How many of these rooms did you take any
4906 trunks from? A. There were trunks in every room.

Q. Including the kitchen? A. No.

Q. Were any in the dining-room? A. In the dining-room and sitting-room and bedrooms there were trunks and cases.

Q. How many cases and how many trunks? A. There were about six heavy trunks and six heavy cases.

. What kind of cases? A. Big cases like that (indicating two or three feet high).

Q. What were they made of? A. I don't know.

Q. Wood or leather, or iron, or what? A. Wood 4907
cases.

Q. Plain white wood? A. Yes.

Q. What were the trunks made of? A. Different trunks; leather trunks and wood trunks and different trunks.

Q. Square trunks? A. Yes.

Q. Some with oval tops? A. Yes.

Q. Some traveling trunks? A. Yes.

Q. Were they old trunks, or new ones? A. No, there were about five new ones.

Q. How about the cases? A. They were all new.

Q. Are you sure of that? A. Yes, I am sure.

Q. Do you know who moved these trunks to Mr. 4908
Deslions' house in Twenty-third street, between Sixth and Seventh avenues? A. No, I don't know.

LOUIS GARNIER, being duly sworn and examined as a witness for Deslions, testifies (through Mr. Benedict as interpreter):

By Mr. Benedict:

Q. Are you in the employment of Mr. Devoluy? A. Yes.

Q. Did you help carry the trunks of Mr. Deslions to the *Bourgogne?* A. Yes.

Q. How many trunks were there? A. There were 4909
thirteen or fourteen trunks.

Q. Were you in the employ of Lagier before? A. Yes.

Q. And in his employ you had helped carry Mr. Deslions' trunks? A. Yes.

Q. Before? A. Yes.

Q. Where had you carried them? A. From Twenty-third street to Twenty-third street.

Q. Afterwards? A. I don't remember.

Q. Don't you know where you carried them? A.

4910 I remember I carried them, but I don't remember the name of the place.

Q. Did you carry them, with help, to the country? A. No, I did not.

Q. Did you help carry them from the country? A. Yes, I remember to have brought them from the country.

Q. Where did you bring them when you brought them from the country? A. To some square; I don't understand what.

Signing of last three witnesses waived.

Adjourned to Friday, December 5th, 1902, at
4911 two o'clock.

NEW YORK, December 5, 1902.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
Mr. R. D. BENEDICT,
Mr HALDANE,
Mr. KOPF.

DIRECT-EXAMINATION OF GEORGE BIRD GRINNELL CONTINUED:

4912

By Mr. Benedict:

Q. Do you remember seeing in this collection of Mr. Deslions' any lances, with scalps and eagle feathers? A. I should say that I did see lances there, but my memory is very vague on that point.

Q. What knowledge have you with reference to the value of such lances?

Mr. Kopf objects, as indefinite, no foundation laid for fixing the value.

Commissioner: Allowed.

Mr. Kopf: That question has been excluded from 4913
time to time in the course of the direct-examination on the ground that there was no foundation laid here for the value of articles.

The Commissioner: I will allow it.

A. The value of any lance depends on its antiquity, its history and its ornamentation. Old lances, of course, are very valuable, for they are exceedingly scarce.

Q. When you say "very valuable" what do you mean by very valuable? A. I should suppose a good old lance would be worth fifty or sixty or a hundred dollars. It is very hard to put a price on this 4914
thing, as if you were going to buy a dozen of eggs.

Q. I understand that. Have you any lances in your collection? A. No, sir.

Q. You have seen them in other collections? A. I have seen them in other collections.

Q. Have you had occasion to know anything about the prices paid for such lances? A. No, nothing.

Mr. Kopf: I move to strike out the testimony as to the value, in view of the last answer.

The Commissioner: I will let it stand.

Q. Do you remember noticing any dancing 4915
sticks with eagle feathers, and medicine and eagle feathers? A. I don't know exactly what you mean by dancing sticks.

Q. I mean the sticks that medicine men used to carry in the Indian dances. A. Yes, I remember seeing at least one or two of them; if I understand what you mean they are these long sticks with curved heads and wrapped with otter skins and ornamented with feathers.

Q. That is the kind. What would you say those

4916 that you saw there were worth; what was the fair value for them, apiece?

Same objection and ruling.

A. It is very hard to answer such a question.

The Commissioner: Won't you qualify the witness?

Q. What knowledge have you with reference to the value of such dancing sticks as that? A. I have only the general knowledge that there are old ones extremely scarce and very hard to get, and they would be valuable to any one who wished such
4917 things. As to dollars and cents, I can't answer that.

Q. Do you remember seeing any dancing belts? A. I remember seeing a number of belts.

Q. Trimmed with eagle feathers and porcupine embroidery? A. Yes, I saw such belts there.

Q. What would you say as to whether those were valuable, and for what reason?

Same objection and ruling.

A. The value of those things also depends on their antiquity, the way in which they were made; the Indians still make those things, but the things that they make to-day for purposes of sale are of
4918 comparatively little value; the old things the value would be measured by their age and the quality of workmanship that was put on them, etc. They usually have a good many eagle feathers, and of course eagle feathers used to be a currency; they had an established money value.

Q. And that value would depend on the size of the feathers, would it? A. In a measure, yes.

Q. What about the value of porcupine embroidery? A. That is desirable and valuable; hard to get nowadays.

Q. What knowledge have you as to the value of 4919
such dancing belts, trimmed with eagle feathers and porcupine embroidery; not modern. A. I should suppose that they might be worth from twenty-five to fifty dollars apiece, according to their character.

Q. Do you remember seeing any tobacco pouches there? A. Yes, there were tobacco pouches.

Q. What knowledge have you with reference to the value of tobacco pouches; say tobacco pouches embroidered with porcupine quills. A. I have seen a great many and I think I have a fairly good notion of their value.

Q. How much would you put them at, made of 4920
buckskin and embroidered with porcupine quills?

Same objection and ruling.

A. Good tobacco pouches, embroidered with porcupine quills ought to be worth at least twenty-five dollars, and might be worth much more, if the ornamentation was considerable.

Q. If there was pictography, if it was painted by the Indians, would that increase the value? A. Yes, unquestionably.

Q. What difference would there be between an embroidery of porcupine quills and beads? A. Embroidery of porcupine quills are much more valu- 4921
able, and would be considered so by every collector, I think.

Q. How much difference would you make for the difference between porcupine embroidery and bead embroidery?

Same objection and ruling.

A. I couldn't give a general answer of that kind.

Q. It would depend on the varied character of the embroidery? A. I should have to see the objects.

4922 Q. Do you remember seeing any game bags there? A. No, I don't think I saw any.

Q. Are you acquainted with Indian game bags? A. No, I never heard of Indian game bags before.

Q. Do you remember seeing any saddle bags? A. Yes.

Q. What knowledge have you with reference to Indian saddle bags? A. I have seen a good many, and I assume that you mean the saddle bags that were put over a woman's saddle to carry her different things; they are practically made no more now; they used to be part of the equipment of every well-to-do or rich woman or girl, and were
4923 very highly ornamented. In the old times sometimes a man would give two or three or four horses for a nice one to give to his wife.

Q. What value would you put on the horses?

Same objection and ruling.

A. Horses to-day are not worth very much. I suppose some of the saddle bags would be worth a hundred and fifty or two hundred dollars, and some might not be worth more than forty or fifty.

Q. Do you remember seeing any Indian tents? A. No, I don't think that I did.

Q. You have seen a great many Indian tents I
4924 suppose? A. I have seen a great many Indian tents.

Q. Have you got some yourself? A. No, sir.

Q. I show you a photograph of two Indian tents. A. Yes, I see it; I should like to ask what material these tents are made of.

Q. We will assume that they are made of cloth, but trimmed as you see; porcupine.

Objected to the witness testifying as to the value of any articles that are assumed to be made of something or other.

The Commissioner: Unless that assumption is 4925
sustained by proof, as matter of course it goes out.

Mr. Haldane: But that isn't the way of proving it.

The Commissioner: To the extent that it has gone I think we may depart so far from the regular order.

Q. What do you say about it? A. I don't know whether I can tell; here is something that could be remade; if those things are made of cloth I could send canvas out to the Black Foot Reservation and get an old woman to paint on them, to get the lodge and fix the lodge poles and so on. I paid, a year or two ago, to a woman who made and sold a lodge, 4926
and got lodge poles for it, about a hundred and twenty-five dollars.

Mr. Haldane objects to what the witness paid. It is no evidence of value.

The Commissioner: I will let it stand.

Q. That was paid out there? A. That was paid out there.

Q. How would the value be affected by its being brought here, instead of being out there? A. Difference in the cost of freight.

Q. Was this that you spoke of embroidered with porcupine? A. No; merely painted. 4927

Q. What effect would porcupine embroidery have? A. That would add to the value of it, for reasons.

Q. You were speaking of the value, made about now; but supposing the tent had been made years ago, and represented the life history of the man who owned it? A. If it had an authentic history and would be connected with an individual, or with some event, then it would be more valuable. I ought to say, when I said I paid so much for that

4928 lodge, that the lodge was of skins and the value of sixteen hides ought to be taken out of the value that I put on; they were about two dollars and a half apiece.

Q. Do you remember noticing in the collection any squaw dresses? A. Yes.

Q. Do you know about the dresses of Indian squaws? A. I have seen a great many.

Q. Have you seen them in collections? A. Yes.

Q. Have you got any in your own collection? A. Yes, three or four.

Q. What would you say as to the value of Indian squaw dresses embroidered, and ancient; not
4929 modern. A. It would depend of course on the character; those that I have I consider worth from a hundred to a hundred and fifty dollars each.

Q. Don't you remember seeing one in Mr. Deslions' collection that was much finer than the others? A. I don't recall it.

Q. One that was embroidered with turquoises, somewhat, in blue? A. I don't remember any such thing.

Q. Don't you remember Mr. Deslions pointing out one to you and your expressing an opinion to him that it was the finest one you ever saw? A. I do not.

4930 D. Do you remember seeing there any boys' and girls' dresses; children's dresses? A. I have no distinct recollection of it; no doubt I did; one goes in there and stays for an hour, and passes his eyes over everything.

Q. What do you say such boys' and girls' dresses would be worth, compared with squaws' dresses?

Same objection to all this.

The Commissioner: I will hear what he has to say.

A. I don't see how I can give a general answer 4931
of that kind; one dress might be worth a hundred dollars, or one might be worth five hundred.

Q. Do you remember any war suits of Indian chiefs? A. Yes, I remember distinctly that there were war suits there, suits of war clothes.

Q. Do you remember one especially, that was trimmed with porcupine ornamented with scalp locks, and leggings and moccasins also, in the same way, and a big war bonnet trimmed with porcupine and some silver? A. I remember quite distinctly a war shirt and leggings with porcupine; I don't remember the war bonnet or moccasins in connection with them. 4932

Q. Do you remember whether there were scalp locks on it? A. Yes, there were scalp locks certainly on one or more war shirts there.

Q. Would those elements be valuable elements in such a war dress as that? A. Unquestionably.

Q. Have you ever seen such chief's dresses as that? A. I think I have never seen one like that, no; I don't remember any.

Q. Have you seen other dresses of chiefs? A. Yes.

Q. Many? A. Yes.

Q. Could you tell enough about that to give any estimate of its value? A. No, I don't think I could. 4933

Q. Would you say it was of small value or large value?

Objected to as immaterial.

A. I should say it was of large value; such a suit as you described would be extremely desirable in any collection, or to any collector, and of course couldn't be had at the present day.

Q. And the age of them, of course, would be an additional element in the value? A. Certainly.

Q. Do I understand that you don't feel that you

4934 could give any value to any of those suits of chiefs that you saw there? A. No, I don't; except that they would be worth hundreds of dollars I wouldn't undertake to say how much though.

Q. Do you remember noticing any Indian saddles? A. Not especially; I have a vague impression that there were saddles there.

Q. What knowledge have you with reference to the squaw and man saddles? A. I have a good knowledge of saddles; I have a good many myself; I have bought them.

Q. What would you say would be a fair value for a squaw saddle and man saddle, elaborate work?

4935 A. An old-time squaw saddle or man's saddle, without any ornamentation or trimming whatever, is worth thirty dollars or more, in my opinion; and if it is ornamented that adds to the value indefinitely; according to the ornamentation.

Q. Do you remember noticing any scalping knives? A. No; knives are not things that one would notice.

Q. I point out to you on Exhibit 3 two knives. A. Yes, I see them.

Q. Have you seen other scalping knives? A. Yes, I have seen many others.

Q. What knowledge have you with reference to

4936 their value? A. Rather a general knowledge; I have bought a few scabbards of that kind; the knife of course is of no particular interest unless it is whetted down by the Indian way of using; it is the scabbard that gives the value to the thing.

Q. What about the value of the knives with the scabbards? A. It depends on the way in which they are ornamented and on their age. I should say those were worth perhaps ten or twelve dollars; the scabbard without the knife—the knife being in the scabbard, would add a dollar or a dollar and a half.

Q. Do you remember any bows and arrows and 4937
quivers there? A. Yes, quite distinctly.

Q. Are you acquainted with bows and arrows and quivers? A. Yes.

Q. What do you say about the value of those?

Same objection as before; same ruling.

A. There are a great many different kinds of bows and they have varying values. The bone bows are priceless; sinew-backed bows are very valuable, and down from that to a boy's bow of wood, without any backing; those are not particularly interesting.

Q. Do you remember the bows that you saw in 4938
Mr. Deslions' collection, whether they were boys' bows, or more valuable? A. They were more valuable; there were two bone bows and a number of sinew-backed bows of the old type, such as they used in hunting and in war; I don't remember how many there were.

Q. Do you remember noticing any Indian blankets? A. I don't remember the blankets; I have an impression that there were blankets, but I don't remember anything specific about them.

Q. What knowledge have you with reference to Indian blankets; the Navajo blankets? A. I don't profess to be an expert; I have a few, and I have 4939
made some little study of their weaving.

Q. Do you have knowledge enough about them to give us a valuation on such blankets?

Objected to. No ruling.

A. They range all the way from seven to eight or ten dollars up to perhaps a thousand dollars; it depends on the weave, the age, material, etc.

Q. I understand you haven't any very definite memory about the blankets that were in Mr. Des-

4940 lions' collection, as to whether they were old or new? A. No, I do not remember.

Q. Do you know anything about the value of Buffalo robes? A. Yes, I have some ideas about the value of Buffalo robes.

Q. What is an ordinary Buffalo robe worth? A. I suppose an ordinary Buffalo robe, if it can be bought, is worth a hundred dollars.

Q. Supposing a Buffalo skin is painted; have you any knowledge about that? For instance, suppose one painted by an Indian by the name of Yellow Hand, and a skin that was captured by Buffalo Bill; what would you say as to whether those ele-
4941 ments would largely increase the valuation?

Objected to. No ruling.

A. The fact that it was captured by Buffalo Bill might increase the worth of the robe to some curiosity hunter; it wouldn't of course to the ethnologist; but as a matter of trade I should think it might increase its value.

Q. I show you this Exhibit 4 and ask you if you remember the picture on that, as one that was hanging up there? A. I don't remember that.

Q. Perhaps you may remember, as you came in this Buffalo robe hanging on the wall to the left
4942 as you came in? A. Yes, I remember that there was a robe hanging there.

Q. Do you remember that it was painted? A. Yes, I remember that; there were a number of painted robes.

Q. Have you knowledge enough of that to give any idea of the value?

Objected to as incompetent. Allowed.

Mr. Haldane: I object to this question whenever it occurs. It is the duty of counsel to show whether the witness is expert enough.

The Commissioner: I will allow it.

A. I don't feel like attempting to give a value 4943
any more than to say that it was a valuable thing; a very valuable thing.

Q. I don't want you to go one step beyond what you feel that you fairly can, of course. Do you remember another Buffalo robe there that was ornamented with deer hoofs and embroidered with porcupine quills? A. Yes.

Q. What do you say as to whether those elements would make the robe valuable? A. They would make it valuable.

Q. Have you knowledge enough of that deer hoof one to give us any idea of the value of that?

Same objection and ruling. 4944

A. I could—I don't think I could; I could say that it was worth more than five hundred dollars, or six hundred dollars; but I couldn't say it was worth a thousand or ten hundred and fifty.

Q. Do you remember as to the character of it, as being common or extraordinary? A. Exceedingly unusual; extremely unusual.

Q. Do you remember seeing wampum belts? A. I remember that there were wampum belts, but I don't remember any more than just that fact.

Q. What knowledge have you as to the value of wampum belts? A. None I should say. 4945

Q. Do you remember any Iroquois shells and earrings and necklaces? A. No, I don't remember anything about the Eastern Indians.

Q. Do you remember noticing any elk-teeth necklaces? A. Yes, there were elk-teeth necklaces.

Q. What do you say as to the value of elk-teeth necklaces? A. I have no personal knowledge as to that; I understand that elk-teeth are worth from two and a half to twenty-five dollars a pair; I have never bought or sold, or interested myself with elk teeth in any way.

4946 Mr. Haldane moves to strike out the answer. No ruling.

Q. What is your understanding of the value of elk teeth based on?

Objected to as incompetent. No ruling.

A. I knew of the sale, a year ago last fall, of elk teeth in Oklahoma, on the Cheyenne Reservation. The common report is the other thing, that people write in to me and talk about having elk teeth, for which they want such and such a price.

Mr. Haldane moves to strike out the an-
4947 swer.

The Commissioner: I will let it stand.

Q. Do you remember noticing any wampum necklaces? A. No, not specifically.

Q. Do you remember noticing any grizzly bear claw necklaces? A. Yes.

Q. I show you, on Exhibit 3, at the top, a grizzly bear necklace, and below is a deer hoof necklace? A. I see them.

Q. What does the value of the grizzly bear claw necklace depend upon?

Objected to as incompetent. No ruling.

4948 A. It depends largely upon its history. In old times, when the Indian had no guns, the killing of the grizzly bear was a great feat, and it meant about as much as striking an enemy, and a man who was successful in killing a grizzly bear would save its claws and use them to put about his neck. They were very highly esteemed among the Indians.

Q. How were they affected by the size of the claw? A. The larger the claw the more valuable the necklace.

Q. Do you remember about the size of the claws

of those that you saw? A. I remember that the 4949
claws were long and large.

Q. Does that picture that you see there on Exhibit 3 resemble the one that you saw? A. I should say so, yes; I can add something about this. I see that the necklet here seems to have the claws of several bears on it; it means that the man who had it had killed a number of bears, and of course that would add to its value to the Indian, and naturally to anybody that wanted to get it from the Indian.

Q. Have you knowledge enough to tell us anything about the value of such a necklace as that?

Objected to as incompetent. Allowed.

A. Hardly, no; I don't know what such a thing 4950
would be worth. I could say what I would pay for it if I could afford to pay for such a thing.

Q. I will ask you that question. What would you pay for such a necklace as that?

Objected to. Objection sustained.

Q. What would you expect to pay, if you tried to buy one?

Objected to. Objection sustained.

Q. Do you remember noticing any human teeth necklaces? A. No, I don't remember those.

Q. Have you any knowledge about those? A. No. 4951

Q. Do you remember noticing any cradles there; Indian cradles, papoose cradles? A. Yes.

Q. What knowledge, if any, have you with reference to their value? A. I have seen a great many and priced a great many.

Q. Speaking of them elaborately ornamented with wampum, beads and porcupine quills? A. The value of course depends on the ornamentation. Those that are highly ornamented are valuable.

Q. I show you Exhibit 3, and you will see some-

4952 thing down in the corner. A. Yes, I see it, but I don't see enough of it to tell you very much about it.

Q. Supposing it to be porcupine ornamentation; what would you say with reference to the value? A. I should say it might be worth fifty or seventy-five dollars.

Q. It is a papoose hood. A. I see it now.

Q. I was asking about the cradle. What would you say with reference to a papoose hood? A. It is pretty general; if it is ornamented with porcupine quills it might be worth forty or fifty dollars.

Q. Saddle cloths ornamented; do you remember seeing any of those? A. I have no specific remem-
4953 brance, no.

Q. Do you know anything about Buffalo skulls? A. Yes, I have seen a great many.

Q. What would you say would be the fair worth of a Buffalo skull? A. A good skull I should say would be worth from ten to fifteen dollars here in the East.

Q. They are rare now, are they not? A. Yes; not to be had; they have all been gathered up and ground up into fertilizer.

Q. What about Buffalo horns? A. I don't know what those are worth at all.

Q. Do you remember anything about Indian
4954 horn spoons? A. Yes, I saw spoons there.

Q. What would they be worth, trimmed with porcupine quills? A. It depends on the spoons; two and a half, five, seven and a half dollars.

Q. Do you know anything about Indian skulls of the Flathead tribe? A. I have handled a great many in my time; I never bought or sold any, and haven't any idea of the value.

Q. Are they rare? A. Yes, they are rare. Distinctly rare; the practice has been given up now; you might go a long way to see a living person with a skull compressed.

Q. Do you remember an Indian woman's suit 4955
trimmed with elk teeth? A. No, I have no distinct recollection about it.

Q. Do you remember noticing any Indian blanket belts embroidered with beads and porcupine quills? A. No, I don't; no doubt there were belts there, but they made no impression on me.

Q. Do you know about the value of such belts?

Objected to as incompetent. No ruling.

A. It depends on the character.

Q. I spoke of them as embroidered with beads and porcupine quills. A. No, I don't think I could say anything about that. 4956

Q. Let me ask if you remember noticing a painting of which there is a photograph here?

Mr. Kopf: This all goes in conditionally, does it?

The Commissioner: Yes.

A. I do not recall it.

CROSS-EXAMINED BY MR. KOPF:

Q. At the outset of your direct-examination by Mr. Benedict you stated that your business was that of a newspaper writer, and a writer of books. What is the character of your writings? A. Of 4957
books, or of newspapers?

Q. Both. A. I write in the newspapers largely on topics connected with sport and connected with the West, and the old-time West; sometimes about cattle ranching; and in books I write chiefly about Indians. I have written one or two boys' books about cattle ranching and so on. Life in the West in olden times.

Q. Can you tell me what the titles of these books are, on the Indians? A. I can give you some of them, and probably all of them. Pawnee Hero

4958 Stories and Folk Tales. Black-Foot Lodge Tales; The Story of the Indian; The Indians of To-day; Jack Among the Indians; Jack, the Young Ranchman; The Punishment of the Stingy; and American Duck Shooting.

Q. Those are all Indian stories? A. Those are not all Indian stories; the American Duck-Shooting book and Jack, the Young Ranchman, are not about Indians.

Q. And the book on the Punishment of the Stingy? A. That is an Indian story.

Q. Do you remember when you were last at any Indian reservation or traveled with any of the
4959 tribes? A. Yes.

Q. When was it? A. It was in May, June and July of 1902.

Q. How long previously had you visited any of the Indians? A. Before that I had been, in June and July, October and November of 1901 on the Northern Cheyenne Reservation in Montana, and on the Southern Cheyenne Reservation in Oklahoma.

Q. When did you first take up the study of the Indians; how old were you at that time? A. I can't exactly say when I first took up the study of the Indian, because it was a gradual thing; I
4960 first commenced to be interested in Indians when I was twenty years old, about thirty-two or thirty-three years ago, and I have been going out West pretty constantly since, and have been seeing more and more of Indians.

Q. I understand that you are fifty-three now? A. I am fifty-three now.

Q. What is the character of the study of the Indians; does it have any special object with you? A. I do it in order to have fun. It is my habit; I am interested in it; I have been doing it for a good many years, and it gives me great pleasure, more

pleasure than anything else; so that whenever I 4961
get away from my office I go out West and collect Indian material of one kind and another; stories or histories, or customs, habits.

Q. Largely with respect to their habits and their little affairs in every-day life of the Indians? A. Yes; the way in which this particular primitive man lived in old times.

Q. You have made no special study with regard to their methods of trading, have you? A. No, not particularly.

Q. You made no point about being present at the sales of any of their goods? A. No; you say "being present at the sales of any of their goods." A 4962
year or two ago I told the Southern Cheyennes that if any of them had old things and would bring them in to me I would buy them; and a great many women took up a lot of old things from under their beds and the corners of their houses and brought them to me for sale; that is, to see if I wished them.

Q. In your study of the Indians and their methods of trading did you pay any particular attentoin to them for the purpose of using it in a commercial sense; that is to say, to buy and sell Indian articles? A. No; no, I don't think I have ever sold any Indian things; I don't recall that I have. 4963

Q. You were simply interested in the ethnological aspect? A. Yes, that is all.

Q. Will you tell me what tribes you have visited and where you have visited them? A. The people that I am most intimate with are the Pawnees, whom I first knew when they were on the Loup Fork in Nebraska, and are now on Black Bear Creek in Oklahoma; the Peagan tribe of Blackfoot up in the northwestern corner of Montana, just this side of the Rocky Mountains; and the Cheyennes who occupy two reservations, one in South-

4964 ern Montana and one in Oklahoma. I am especially interested in them; about the two tribes I have written books, and I am working on a book of the third.

Q. These are known as the Pawnee and Black-foot and Cheyennes? A. Yes.

Q. What are the others that you have visited? A. I have been to a good many reservations. I am pretty intimate with the Gros Ventres, Assiniboines, at Fort Belknap, Montana. I have been several times to Fort Berthold, where the Rees, Minetarees and Mandans are, and then I have seen something of the Arapahoes; odds and ends of
4965 tribes. I used to know the Utes pretty well down in Colorado. Then I have seen something of the Snakes; I have seen something of the Tlinkit Indians, Alaska; something of the Esquimaux. I think I would have to write to mention a complete list.

By Mr. Benedict:

Q. Did you see the Sioux? A. I saw the Sioux for the first time last spring.

By Mr. Kopf:

4966 Q. Did you ever visit the Navajo Indians? A. No, sir.

Q. Which of the tribes that you have selected as having visited are considered as having the best curios, or making the best Indian goods? A. I can't answer that question. I don't know anything about Indian curios. I only know about these old-time implements that these people used to use.

Q. Then with regard to the implements which do you consider were the most valuable; made by which tribe? A. I think the Black-foot implements would be the most valuable to the man that was

interested in the Black-foot; the Cheyenne imple- 4967
ments to a man that was interested in the Cheyenne; I can't compare the two things at all, and I don't see how you can. You are talking about money value, aren't you?

Q. I am talking now from the standpoint of a collector; where would he go to get the most ancient and valuable articles? A. That is quite a different thing. My impression is I would go to the Sioux, to the Cheyennes and Northern Cheyennes. I mean of the people that I know anything about—I can't tell about people that I have never seen—even they had very little. Last spring I saw one or two old saddles of the old types, on the 4968
Northern Cheyenne Reservation I saw one or two; but there is little, very little left of the old-time things.

Q. With regard to having in mind the subject of my last question, I ask you if you found many of these old-time implements and curios in the collection of Mr. Deslions? A. He had a great many interesting things; that seemed to me interesting, because of their age and probable history.

Q. Can you tell from what tribes they came? A. I couldn't tell by looking at them; I could only tell as he told me about them.

Q. So, if you picked up a war club in his house 4969
and he, or anybody else, hadn't given you a history of it it wouldn't mean anything particular to you? A. It would lose a great part of its interest to me if it had no history.

Q. I mean to say, as by looking at it, without a history it wouldn't convey anything to you at all, would it? A. It might convey quite a good deal to me.

Q. How? A. I should see how it had been manufactured, and I should see what marks of age it bore, marks of use, the polish of the handle, batter-

4970 ing on the hammering end, and all those things would tell their own story. They wouldn't need any label; but on the other hand, it would be much more interesting if it had a label saying that this belonged to Standing Bear, Piegan, who was in such and such fights and died so and so.

Q. So, in fixing the value of any article of any of the Indian tribes it is not altogether necessary to have a history of it, is it? A. It is not altogether necessary, no; but it is desirable always. I never bring home anything, I never get anything without putting a label on it just as soon as I get it.

Q. When you were at Mr. Deslions' house did
4971 you notice how many trunks he had there? A. No, I haven't any idea. There were a lot of trunks I should say; I don't know how many.

Q. Were they all open and the contents exposed to you? A. Not at all; but my impression is that he opened one or two or three trunks and pulled out some particular thing that he wished to show to me.

Q. As you remember it now the things on the wall were more interesting than those things that he took from the trunks, weren't they? A. I should say it was rather the other way; my impression is this, that the things that were in the trunks were
4972 things that were perhaps more perishable than the things on the wall; that is to say you hang a bone bow up on the wall and you are pretty sure that neither moth nor any other kind of a bug will destroy it, but a Buffalo robe hanging on the wall through the summer, you know there won't be much left when you get back in the fall.

Q. There were Buffalo robes hanging on the wall, were there not? A. There were, yes.

Q. You were asked on your direct examination how Mr. Deslions' collection compared with other private collections that you had seen. Will you

state what private collections you have seen? A. 4973
That is rather a hard question. I have seen quite a lot of things that Mr. White has, up here in Fifty-seventh street; things that Mr. Deming has; things that my friend W. S. Phillips, of Washington, had; things that Major Birgenheimer had, of the Standing Rock Reservation; and that is about all that I can think of at the moment. All those people had quite a lot of things. Of course I have seen a good many odds and ends of small collections in different hands; but I don't remember them.

Q. Did you ever buy anything from Mr. Deslions? A. I can't remember very distinctly 4974
whether I have or not. I may have bought some small thing of him; yes, I remember buying three books of him once; those are the only things that I recall at the moment.

Q. What kind of books? A. There were three French books with three volumes of Maximilian's Prince of Wied's Travels in the Interior Part of North America in the years 1853 and 1854, I think. That title is given from memory.

Q. In fixing these values that you have, of the different articles, you haven't undertaken, and don't undertake, to say that those values represent the market prices? A. I don't see how there can 4975
be a market price for things of this kind; things perhaps of which there are only two or three, or half a dozen, in the world. Can you talk of the market price of such things?

Q. You can talk of the market price of certain editions of Shakespeare. A. Of course there are market values; the auction value of a unique book, of course, I suppose fixes the market value for that particular book. But you can only speak generally, it seems to me, of such things as these, because they are so few.

4976 Q. You are inclined to fix the value according to what you have paid for it, aren't you? A. Well, I never have bought anything that was very expensive. I fix a value on what I believe people would be willing to pay for such things; perhaps what I would be willing to pay.

Q. Have you ever testified as an expert before? A. Never before.

Q. You have been asked about the value of a number of articles; is it not true that the value of such articles depends upon the character, style, history and individuality of the article itself? And even if ornamented or decorated, would not the
4977 value depend upon the ornamentation or decoration? A. Very largely; not solely on ornamentation or decoration. It would depend on all these other things that you speak of. The ornamentation and history and age; the use to which the thing was put, and half a dozen elements come in to fix the value, the interest and desirability, and so the money value of the object.

Q. In fixing the value of some of the articles, or all of the articles that you have stated that you saw in Mr. Deslions' collection, did you have in mind the character, style, history and individuality of the article? A. Not the history, because I knew
4978 nothing of the history; but a portion of the history is told me by looking at the object. When I look at it I know that there is something used for a certain purpose; evidently made a long time, and if I am told what its history is that adds so much to the interest.

Q. Now mention the articles in Mr. Deslions' collection that you have put a value on, where the very article itself told you what the history of it was? A. Most of the articles that I have mentioned—pipes, bows, shields, painted robes, dresses and so on, most of them told their own story, but

their story would have been more complete if they 4979
had had labels on them, and I had known where they came from, and who made them; how they were handed down, say from some old woman grandmother, for two or three generations; all those things would have added to their interest to me, and to their value as far as I am concerned. They might not have added one cent's worth of value to somebody who was merely making a collection of Indian things to hang on his wall.

Q. I show you Exhibit 1, and I ask you to state what historical facts are connected with the pipes which you have numbered in that Exhibit? A. Might I ask you to define historical? 4980

Q. I take the word from your mouth. In part of the examination, many times in your examination you have spoken of the history being labelled, and very often you could tell of the history by looking at the article. A. Yes, I can tell something about a number of these pipes and something of their history by looking at them. For example, I see here pipe No. 3; that is a medicine pipe used in a variety of sacred ceremonials, smoked by people who are sick, passed over the bodies of people who are ill or in misfortune; and that smoking and passing over the body, together with prayers made by the priest, cures those people of their ills or 4981
helps them out of their misfortune.

Q. That particular pipe, or a similar one? A. That particular pipe.

Q. Where did you get that information? A. I get that information by looking at the pipe.

Q. Do you mean to say that is the only pipe of its kind? A. Oh, no; pipes of that kind are—I have seen many of them.

Q. Should you say they were easily obtainable? A. One was sold by the Black-foot Reservation

4982 about five or six years ago, and a man gave forty horses for it.

Q. With regard to any other pipe I ask the same question. A. I see here two pipes ornamented with porcupine quills and scalps, and with particularly long stems. Those are ceremonial pipes, used only on great occasions, such as making treaties or when great people came to visit the camp; then those are the pipes that are used when men sit around in a great circle; a man walks along in front and lets one man after another take a whiff, and that is a part of any peace-making or a part of the reception of so-called visitors.

4983 Q. In what tribes would you find a pipe of that kind? A. I should suppose that this pipe that I have numbered 1 is a Sioux pipe. I don't know what No. 5 is; but it comes from some tribe up on the upper Missouri; I should think likely the Gros Ventres.

Q. In what tribe did you find pipe No. 3 that you first described. A. That is very likely a Sioux pipe; but I can't say what tribe it is, positively.

Q. You didn't give any historical fact with regard to pipe No. 1. A. No, I spoke only of that and pipe No. 5 as being pipes used on ceremonial occasions. If I made a treaty with you and you

4984 came with all your warriors to me, I would give you such a pipe as that to smoke.

Q. I ask the same question with regard to the history of any other pipe there; just go along with the other pipes, if you can. You have only described 5 and 3. A. 5 and 3 and 1.

Q. 1 and 3 are in the same class? A. They are for the same purpose. The pipe No. 7 is such a pipe as men carried often on their war journeys, it being a hatchet with a pipe in the heel, and a hole through the handle so that one could use it as a pipe in smoking. The other pipes have about

them nothing that is particularly characteristic. 4985
They are such pipes as any well-to-do man might possess and use in his ordinary—or rather in his ceremonial smoking. They are good pipes. Most men would use a commoner pipe for every-day smoking. They would bring out these pipes on the occasion of visits, or when they had gatherings in their lodge. I think that is all I have to say about these pipes for the moment.

Q. You have given me a description of the uses to which they are put, but you haven't given me any historical facts in relation to them. A. Well, I don't know as I can give you any more historical facts than I have already given you. I have given 4986
you facts with regard to the history of these pipes.

Q. With regard to the use of them, as I understand it. A. I can't do anything better, I think, unless you can put some questions to me that will extract something.

Q. Did you see this collection of pipes at the Kit-Kat Club? A. No, I never saw them anywhere except on the one occasion when I was at Mr. Deslions' house.

Q. At the time you were at Mr. Deslions' house did he give you the history of any of these pipes? A. He told me that as to the long pipe, which I think is numbered 5, and the pipe at the top, how 4987
he had obtained them.

Q. What did he tell you about them? A. He told me that had obtained them by exchange from some museum in Europe, and that they were pipes that had been brought back by one of those early explorers; either by Maximilian or by Catlin, from the upper Missouri in about 1833 to 1835. That is my recollection of what he told me.

Q. I meant to ask you about these other pipes. Have you seen similar pipes in other collections or other places? A. I should say not; pipes are un-

4988 usual, not many people have pipes; and pipes like these are exceedingly unusual; a medicine pipe like that I have never seen in any collection, unless possibly some great museum. I can't remember; I certainly never saw it in any private hands.

Q. Not even in the hands of an Indian? A. Yes, I have seen them in the hands of Indians. But I mean in private collections. I supposed you referred to that.

By Mr. Haldane:

Q. You have given general values here, sometimes with a minimum and a maximum figure.
4989 Isn't it true that that general value, or those general values, would have to yield to the particular true value of each one of these articles if you had it before you, or a particular description of it? A. I don't think I quite understand.

Q. (Read to Witness.) A. That isn't very clear to me, but perhaps it means that if I had the thing here and could look at it I would be able to say within very much closer range what it was worth?

Q. Yes; you could testify more intelligently about its value, couldn't you? A. Certainly.

Q. I include in that question if, instead of having the article itself you had a detailed minute de-
4990 scription of each particular article you could testify more intelligently as to the value of it, and more closely as to the value of it, couldn't you? A. A little bit; but things that you read don't tell you the same story that your eyes would. If you have a thing before you, you know all about it.

Q. Take a painted Buffalo hide. Doesn't the value of that depend at all on the character of the painting? A. Very little, if you are sure that it is primitive. But if a white man has tried to draw the picture on it——

Q. How can you tell if it is primitive or not, if

you haven't the article before you? A. One or two 4991
pictures here show work that I would be willing to swear was Indian.

Q. I am speaking of the painted Buffalo hide? A. There are one or two here that show Indian work.

Q. As to the ones that you saw among Mr. Deslions' collection, do you know now whether they were primitive, or what the subject was in any one of them? A. No; but I know positively they were primitive, because if they hadn't been it would have made such an impression; I should have been so indignant at being shown something that wasn't the real thing. 4992

Q. What do you mean by primitive? A. Done by primitive man; by Indians.

Q. Then it hasn't anything to do with the age of the hide? A. No; the Indian is primitive; he was a stone age man.

Q. How can you tell whether that was drawn by a white man or an Indian? A. By looking at it.

Q. How? A. By the way in which the figures are drawn on the hide, and, possibly, by the kind of paint that he has used. Certainly by the way—the white man can't imitate that Indian drawing. I have known one or two artists up-town that have tried to, and have never fooled any one; it is the 4993
way the figures were drawn.

Q. One couldn't even trace them? A. A man might do that, of course.

Q. That is to say you don't know that you have ever been deceived in one of them? A. No.

Q. But you might have been? A. Yes, but I have a lot of confidence in myself in that respect.

Q. I simply wanted to know whether or not you haven't been compelled to give your opinion as to value here, with rather insufficient data? A. I

4994 think I have, certainly; I agree with you there, perfectly.

Mr. Benedict: We will all agree to that.

REDIRECT-EXAMINATION BY MR. BENEDICT:

Q. Do you remember having any conversation with Mr. Deslions at that time about a historical catalogue of his collection? A. Yes, I do.

Q. What did he tell you about it? A. We had some conversation and I told him that it was a great shame that his things were not labelled, and he said that he had all the information and was
4995 going to write it down.

Q. Didn't he show you something, some memoranda or article in writing, or in typewriting, with reference to some of the articles? A. I should say that I saw some written sheets of paper, but I don't remember distinctly.

Q. Don't you remember an article written about some of those painted skins? A. No, I do not; but I was very strenuous in telling him that those things ought to be labelled; that they lost interest in not being labelled, and that if he were struck by lightning tomorrow here would be his collection, without any story about it.

4996 Q. Didn't he tell you that he had the material to make such catalogue? A. Yes.

Q. Did you have any talk with him about the supposition that he might be willing to sell the collection at any time? A. I don't know; I know he said to me that there were certain things that he never intended to sell. My impression was that they were things that he valued so highly that he wouldn't part with them.

Q. Do you remember any of them? A. No.

Q. Do you remember anything being said about your asking him if he ever was willing to sell it

to let you know before he sold it? A. I recall ask- 4997
ing him to let me know if he ever intended to sell his collection.

Q. Why did you want to know if he was going to sell?

Objected to as immaterial.

The Commissioner: It is allowed.

A. I don't think I had any definite purpose, but there were a number of things in his collection that I coveted, and that I would have bought if I could have afforded to.

Q. Did you form any judgment as to the value of 4998
the whole collection, as far as you saw it?

Objected to as immaterial. Allowed.

A. I did not; I didn't see enough of it.

Q. As far as you saw it, I say. A. No, I don't think that passed through my mind at all; it was simply the idea that they were of much value.

Q. You have spoken of several collections, private collections; are there any larger private collections in the United States than those you have mentioned?

Objected to as incompetent. Allowed.

A. I believe that there are a number of larger 4999
private collections.

Q. Can you tell where? A. One, I understand, is in Chicago, belonging to Mr. Ayres; there is one up in Michigan or Wisconsin somewhere; but I don't remember to whom it belongs.

Q. You have never seen those? A. I have never seen those.

Q. You have seen the collection in the Museum of Natural History here? A. Such parts as are on exhibition, and some other things.

5000 Q. How did Mr. Deslions' collection compare with that, as to extent?

Objected to as immaterial. Allowed.

A. It was, as far as I could judge from what I saw, very much smaller and very much less important.

Q. Which was the smaller? A. Mr. Deslions' was very much smaller and less important. At the American Museum they have a wonderful collection.

Q. Do you know whether that collection has been increased largely within the last few years, in the
5001 museum? A. Very largely; it is constantly being increased.

Q. Could you tell enough how it was at the time of the loss of the *Bourgogne*, say in 1898, to compare with this colection of Mr. Deslions? A. No, sir, I could not; it was a very large collection then.

RECROSS-EXAMINATION BY MR. KOPF:

Q. I have heard the word "connoisseur" used very often; I want a definition of it. Isn't it the habit of all connoisseurs to label their curios, as you have described? A. I don't know anything about the habits and customs of connoisseurs of
5002 curios; but collectors of ethnological things commonly label their things.

Q. Do you remember what articles Mr. Deslions wanted to sell you, or was talking about selling? A. I don't remember that he wanted to sell me anything.

Q. He spoke of selling some things; do you remember what things they were? A. He spoke of not selling some things; this particular thing that I suppose we were talking about; and then I said to him in some way that if he ever did sell these desirable things I should like to have him let me know.

The things I particularly referred to, that I saw, 5003
were the shirts, bows and arrows, some of these pipes which I felt a great longing for, and painted robes.

Q. Did you ever see the collection of one of the Mayors of Guthrie, Oklahoma? I forget his name now? A. I never saw it.

Q. You never heard of it? A. I never saw the collection of any Mayor of Guthrie, so far as I know; I never heard of it even.

Q. I have heard something of it, and I am not a connoisseur. I have heard it was one of the finest Indian collections in the world? A. Of course we hear a great lot about ancient Indian things, but 5004
when you get on the ground sometimes you find they are not there; there is a great deal of reputation from a very small foundation sometimes.

By Mr. Benedict:

Q. You have spoken of labelling articles. Would it not be the same to all intent if there was a number, provided the history of the article was kept by itself and with that number? A. Undoubtedly, if that were properly done; that is the common way in museums.

Q. You wouldn't write on the article, but a catalogue made by numbers? A. Certainly. 5005

Q. I don't know whether you noticed whether these articles of Mr. Deslions were all numbered? A. I did not notice that.

Q. I suppose you are not able to see about these pipes. These are all numbered, but it requires a microscope to discover the number? A. I was going to volunteer a statement. I have been asked whether I couldn't fix the value better if I could see them; that is true, but I have spoken of a number of things that I did see, and of which I

5006 have a distinct recollection, and I should be willing to stand on their values in such cases.

Mr. Haldane: My question only had reference to general value.

Mr. Kopf: I wish to give notice that we will not cross-examine any witness on the question of values until the list, which the other side promised to furnish, describing the articles, is furnished.

Mr. Benedict: Please state on the record just what you want, so that we may not misunderstand each other.

Mr. Haldane: We want the claimant to produce a written description of the articles contained in
5007 this collection, in those trunks, or of such of them as he can describe. We want him to do the best he can in the way of description of individual articles.

Mr. Benedict: I will see what we can do in that regard.

Adjourned to Friday, December 12th, at 2 P. M.

NEW YORK, December 12, 1902.

Adjourned to December 19, 1902.

5008

NEW YORK, December 19, 1902.

Met pursuant to adjournment; all the parties being present as heretofore stated.

JOHN J. WHITE Jr., being duly sworn and examined as a witness for the claimant, testifies:

By Mr. Benedict:

Q. What is your business? A. I am in no special business at present.

Q. Are you acquainted with Mr. Deslions? A. 5009
I am.

Q. Did you ever see Mr. Deslions' collection of Indian curiosities, or part of it? A. I saw part of it.

Q. Where and when? A. At his apartment on Washington Square South; I have forgotten the exact number; in the spring of 1898.

Q. How did you come to see them, do you remember? A. Mr. Deslions wrote me a letter that he had certain articles for sale, and I went up there.

Q. How were they distributed, what you saw? A. They were hung around the walls of the room and on the floor, and what not. 5010

Q. Did you see all that he had? A. No; I only saw what he had in that room. I understood that he had quite a little more.

Q. Did he show you things that were not hanging on the walls? A. In speaking about articles that I wanted to see that were not in the room, if I mentioned something that was not, he generally would go in the back room and bring it out; it happened two or three times.

Q. Will you give a general description of what the articles were that you saw, as well as you can? A. I remember a couple of little wigwams, tepees; I remember one or more war shirts hanging up, 5011
with the leggings; feather head-dresses; a lot of pipes; Indian painting on canvas; there were several buffalo robes, two of which were painted that I can remember; there were some leather cowboy suits or suit; and various articles of that kind; tomahawks, pipes, bows, moccasins, guns.

Q. Did you see any shields there? A. Yes; there were three or four shields that I saw hanging up.

Q. Did you buy any of them? A. Yes, I bought two shields.

5012 Q. What were the shields made of? A. Buffalo hide.

Q. Were they two of similar make, or different? A. One was in a case or cover, and one was not in a cover.

Q. What did you pay for them?

Objected to as immaterial and incompetent. Allowed.

A. About $75 or $100 apiece; somewhere around there; I can't remember now; I know it was over $75.

Q. Did you buy any other articles? A. Bought
5013 several others.

Q. Do you remember them? A. I bought a war shirt and leggings; I bought a couple of bows, one bone and one horn; I bought a war shirt and costume, a squaw dress, leggings and ornaments. I would have to think what I did buy. I bought quite a little more. I bought a couple of tomahawks, I remember; two or three pair of moccasins, I think.

Q. Can you remember the prices you paid for these articles? A. Not individually.

Q. Do you remember the price of any of them aside from the shield? A. I paid about $100 for a war shirt.

5014

By Mr. Haldane:

Q. Yes or no; do you remember? A. I remember approximately. That is, I would be prepared to say that I didn't pay less than $50 for the suit and more than $100 for——

By Mr. Benedict:

Q. What memory have you as to the price that you paid for any of these articles? A. Individually or collectively?

Q. Individually? A. I bought a pair of mocca- 5015
sins for, I think, four or five dollars.

Mr. Haldane: I want a chance to get in my objection to the price. I will object to it now without being so technical about its being in two questions instead of one.

Allowed.

Q. Tell any others that you can remember? A. I cannot remember definitely any exact price that I paid for anything. I paid about $100 apiece for the bows.

Mr. Haldane objects to the answer and moves 5016
that it be stricken out as immaterial and incompetent.

The Commissioner: Let it stand.

Q. I show you these photographs, Exhibits 1, 2, 3 and 4, and ask you if you remember having seen in that collection any similar objects to those on the photographs?

Objected to as incompetent; not only the question as framed is incompetent, but the exhibits shown to the witness have not been properly identified. Allowed.

A. I can identify several of those pipes that I see 5017
that I have seen there; notably the three peace pipes, that are numbered 1, 3 and 5; and various others there I can pick out. That tomahawk (marking it A on photograph); this one that is numbered 7; I remember that pipe (marking B on photograph); there are dozens of them here that I know that I saw, but I won't swear to. I can swear to that one (marking C on photograph). These are a little more extraordinary than the others and I remember them on that account. That one I will swear to (marking D on photograph); I remember a great many

5018 of the others, but I won't take the time to mark them.

Q. Look at the other photographs? A. I remember that gun on Exhibit 2; that gun had a buffalo head scratched on the lock. Those shaps and coat I saw, a suit, and this rope bridle, if I am not mistaken. There was a canvas lodge lining that hung right along the top; it ran the length of the room, as I remember; rather a handsome one; and there seems to be a part of it, as well as I can tell. It is so dark I can't see it

Q. Take the next one, No. 4? A. I feel pretty sure that I saw this lodge lining again here; there
5019 is a club that I remember. I wouldn't swear to the head dress, but I think I saw it.

Q. The next one, No. 3? A. There is a bear-claw necklace that I remember seeing; and I saw that war shirt. If I could see the colors in it I could tell better. I can't remember exactly, but I know there were two or more war shirts hanging in the room, and I am pretty sure I saw them. That seems to be about all there is there that I can swear to.

Q. Look at this photograph which I now show you which is not yet put in evidence and see if you can recognize having seen any similar objects to those shown there?

5020 Objected to that the photograph is not identified.

Mr. Benedict: It is the same one that was shown to Mr. Grinnell.

The Commissioner: This gentleman's evidence will be in the same position as Mr. Grinnell's, as to those, if the photograph is not identified.

A. To the best of my knowledge and belief those are the two tepees. This one I could swear to, and that one I am pretty sure I could. I remember a buffalo skull in about the same condition as that

one, and various things I think I can identify; that 5021
shirt, that suit he had on, seems to be the same one that was hanging up there. I wouldn't be sure, but it looks very much like it.

Q. That shield? A. I remember a shield that looks very much like that; but I can't swear that that is the same shield I saw.

Q. As to the general appearance? A. As to general appearance it is the same as in all those things.

Q. Did you learn from Mr. Deslions anything of the history of the shield that you bought? A. Yes.

Q. Did you take any means afterwards to verify that statement? A. I did.

Q. What means did you take? A. When I was 5022
out on the Standing Rock Reservation last May I took a painting of the shield out there, and it was identified by Rain-in-the-Face, who was present and testified.

Q. You have been making a collection of Indian curios yourself, have you not? A. A small one.

Q. What effect upon the value of Indian implements would the antiquity of the article have?

Objected to as incompetent. Allowed.

A. Of course an antique article would be worth more than one of the modern ones; it naturally would.

5023

Q. Do you know whether porcupine work makes an article more valuable? A. Yes.

Q. Does it or does it not? A. Yes.

Q. Do you know whether the Indian pictography on articles increases their value? A. That is a pretty hard question to answer put just that way.

Q. For instance, take a shield; if there was no painting on it, would it be worth as much as if it was painted? A. Suppose it was painted by an Indian that I told to paint it on, it wouldn't increase the value of it. If it was an old shield with picto-

5024 graphic work on, it would be a great deal more valuable; the same way with porcupine work.

Q. What is the chance of duplicating old Indian implements nowadays?

Objected to as immaterial and incompetent. Allowed.

A. It is getting very small.

Q. Do you think that what you saw of Mr. Deslion's collection could be duplicated to-day?

The same objection and ruling.

A. There were certain things that could be dupli-
5025 cated, and certain things that could not. This warlock war dress would be very hard to duplicate nowadays; that is, in genuine articles; they could be duplicated from collections and museums and what not; but very hard to get among the Indians. I have been trying myself to get another shield, and although I have had men inquiring among several tribes, they have not been able to get one for me; that is, not an old one.

Q. What do you say as to the shields that you bought being worth the price that you paid?

Objected to as incompetent. Allowed.

A. That is a pretty hard question to answer. I
5026 would pay the same amount willingly for other genuine shields.

CROSS-EXAMINATION BY MR. HALDANE:

Q. Are you able to testify that the identical articles represented in any of those photographs are the same ones that you saw in Mr. Deslions' possession? A. Can I get a microscope to see the buffalo head on that gun? If so, I will swear to that, because I don't believe there was another one in New York at that time. I am afraid it is too dark and won't

show. Those pipes I will swear to. I will swear to 5027
that No. 3, any way, and I will swear to this No. 2. (The microscope being produced witness looks at photograph with it.) No, it is pretty dark. I can't see that buffalo head. That pipe labeled B 1 will swear to. For instance, those two tomahawks marked A and 7, I suppose it would be perfectly possible that in some of the collections there would be duplicates of them; but I would be willing to swear to them on the chance; that is, if I was assured that that photograph was taken at Deslions's rooms, that those were the same ones. I know that they are. And the same way with dozens of those pipes. I know that they were the same ones. I 5028
remember distinctly this one with Napoleon on it. But suppose some one might have struck another one in there, and then I would swear to the wrong one. The chances aren't one in ten million, I suppose—and in the same way here all these things (referring to photograph not yet marked)—that tepee is the same. It is perfectly possible that there might be others in New York which were photographed in just this way, but I should say that it was very, very doubtful; so much so that I would be willing to swear to it. I remember I was negotiating for that tepee. I wanted to get it as a specimen of the painting; so I remember it on that 5029
account.

Q. Those painted tepees are numerous, are they not, among the Indian tribes? A. The modern ones, yes.

Q. And they have become more scarce as they date back, have they? There are not so many of the older ones? A. Those that are made nowadays, I don't believe would be worth much more; it is the older ones with the old paintings on them that are worth more.

Q. You have testified that those are the same arti-

5030 cles you saw because they look just the same; is that it? A. That is pretty close to it, yes.

Q. What was it that you showed Rain-in-the-Face? A. I showed him a painting copied from this shield.

Q. What sort of a painting; oil painting, or water-color? A. Water-color.

Q. Who painted it? A. It was painted by a friend of mine.

Q. Painted by hand? A. By hand.

Q. What did Rain-in-the-Face say? A. He didn't say anything to me personally, but through the interpreter he gave the history of the shield.

5031 Q. Had you seen the shield? A. It belongs to me.

Q. Where did you get it? A. Bought it from Deslions.

Q. And a friend of yours painted it after it was in your possession? A. Painted a copy of it; yes.

Q. What time of the year 1898 was it that you saw these articles at Mr. Deslions' house? A. I couldn' tell to a day; it was in the spring I should say.

Q. Was it February or March? A. I saw them at different times. I was at his house several times; I couldn't say when the first day was. The last time I was there was just before the end of June; in the

5032 middle of June.

Q. Did you make any purchases at that time? A. No.

Q. How late in 1898 was it you made your last purchase? A. May or June say, to the best of my recollection. I can't remember whether I bought my things in May and June.

Q. What articles did Mr. Deslions want to sell you? A. I came in and saw his collection and I saw several things that I wanted and spoke to him about them. He either offered to sell them to me or refused to.

Q. Which did he refuse to sell that you wanted? 5033
A. He refused to sell me one of those pipes.

Q. Which one, one of those that you have identified? A. Yes.

Q. Which one? A. Any of them. These three, No. 1, or No. 3 or No. 5.

Q. When you saw the pipes were they arranged in a collection similar to what is shown in that photograph? A. No, they were together, the three of them, one above the other.

Q. Speaking of the whole collection as shown by that photograph, was there a collection like that on the wall? A. Yes; not like this; but there was a collection of pipes up against the wall. The articles 5034
were not in the same position.

Q. What did Mr. Deslions say as to those which were so exhibited on the wall being all the pipes that he had? A. I don't remember that he said anything about it.

Q. Did he produce any pipes from anywhere else, except in that collection on the wall? A. I bought a pipe or two from him, but I can't remember whether he took it from that collection or whether he brought it out from other places. Yes, I could tell you if it was in this collection. I bought a tomahawk pipe from him which is not in this collection. It has a little bird in the handle; and there 5035
was a redstone pipe which is not here. I don't think I bought any pipes that are in this collection. The only ones that particularly interested me were those three, 1, 3 and 5, which he wouldn't sell.

GEORGE DESLIONS, recalled:

By Mr. Benedict:

Q. I think you have testified that this photograph Exhibit 1 was a photograph of the pipes which were on exhibition at the Kit Kat Club, have you not?
A. Exactly, yes, sir.

5036 Q. Will you tell us what this photograph Exhibit 2 is a photograph of?

Objected to as incompetent; not the way to prove the photograph.

Q. Who made the photograph, do you know? A. I made it.

Q. Yourself? A. Yes.

Q. Is it a photograph of part of your collection? A. Of part of my collection.

Q. When did you make it? A. I made it during the time that I was in Washington Square to illustrate a catalogue at the suggestion of Mr. Grinnell.

5037 Q. What about Exhibit 3; who made that? A. I made it also.

Q. Did you make No. 4 also? A. Yes, sir.

Q. Did you make them at the same time, about? A. I made many; I made several hundred. It just happened that I found those in my little trunk. I made several hundred. Those were the proofs of the negative of the photographs.

Q. Have you got any other photographs of the colection? A. No, sir; those are all I have.

Q. Those were all that were left? A. Yes.

Q. Now I ask you about this photograph which I now show you which I will have marked Exhibit 5,

5038 whether you know that was taken? A. That was taken during the summer prior to coming to Washington Square.

Q. Where was it taken? A. Taken in Long Island.

Q. By whom? A. It was taken by a friend of mine who was spending a couple of weeks vacation in my country house.

Q. And the Indian objects that are photographed in that, were they part of that colection of yours? A. Yes, sir.

The photograph is offered in evidence. 5039

Objected to as incompetent, and not properly proved.

Received and marked Deslions' Exhibit No. of this date.

Q. What were these teepees in Exhibit 5 made of? A. Those were made of canvas painted, and they were decorated with porcupine embroidery, especially on the top and on the front and door; and there was the history of the Indian who made that teepee, pictography representing the history of the Indian who made the teepee.

Objected to as not responsive. 5040

Q. Do you know who the Indian was who made the teepee? A. He was a Sioux. Just now I forget who it was.

Q. You have spoken of a chief's dress trimmed with porcupine and ornamented with scalplocks, and leggings and moccasins also in the same way, and a big war bonnet trimmed with porcupines and silver. Can you give any history of that? Can you tell where you got it and whose it was? A. No, I don't remember.

Q. You have spoken of having some saddles. Were those saddles that you had modern saddles or ancient saddles? A. Ancient saddles. I wasn't 5041 collecting anything new; I was only collecting ancient articles.

Q. About the blankets that you had there. What do you say as to whether they were modern or old? A. Old ones. They were Navahoe blankets dyed with vegetable dye, old ones, not modern. I wasn't colecting anything but ancient articles.

5042 CROSS-EXAMINED BY MR. HALDANE:

Q. How do you know that the Navahoe blankets were old ones? A. As I stated before, because they were dyed with vegetable dye.

Q. How do you know that they were dyed with vegetable colors? A. I know it, because the modern ones that are dyed with aniline colors fade in the light, in the sun.

Q. How do you know that these were dyed with vegetable colors? A. I know it was so because the old was very old and the original color showed plain; no fading about it.

Q. In other words, you know that they were old
5043 because the colors hadn't faded? A. I know it also from the wool. I know they were old on account of the color and also because they were made with the wool made by the Indians, while to-day the wool is dyed by the white man and made in the factory and traded to the Indian.

Q. How do you know? A. Any man would know the difference.

Q. Have you seen that done yourself? A. Yes.

Q. What factory? A. Any kind of factory; any kind of trader is buying wool from New York City.

Q. Do you know anybody? A. Yes, sir.

Q. Who? A. Mr. Frost is sending wool there
5044 every week to the different Indian traders and you could go and buy there a hundred pounds if you want of modern wool, of all kinds of colors, blue, green——

Q. Where did you get these Navahoe blankets? A. Buy some from some Indians, buy some from different collections, at different sales.

Q. Isn't it a fact that you know that the blankets were old because the colors hadn't faded; isn't that the principal reason why you are of the opinion that the blankets were old? A. That is one of the

reasons; and the second reason is because the wool 5045
was made by the Indian.

Q. How do you know the wool was made by the Indian? A. I would recognize it; it is cross weaving.

Q. Are you an expert in wool? A. I am not an expert in wool, but I am an expert in telling an old blanket from a new blanket.

Q. If a person shows you a Navahoe blanket can you tell simply by looking at it, whether the wool was made by an Indian or not? A. Yes, sir.

Q. Where did you acquire that knowledge? A. I am connoisseur; I have knowledge. There are lots of books on that subject. 5046

Q. What book is that? A. I do not recollect the name of the book just now; but I studied such a book.

Q. Where did you get the book that you read on the subject of wool for blankets? A. It is published at the Smithsonian Institute.

Q. Who wrote it? A. Mr. Powell.

Q. Where can you buy that book? A. I don't think you could buy it.

Q. Where did you buy yours? A. They were sent to me from the Smithsonian Institute, Washington.

Q. What did you do with them? Did you return them to the Institute? A. They gave them to me. 5047

Q. Let me understand you. Do you say the Smithsonian Institute gave you books? A. Sent me Annual Report every year.

Q. I asked you if you knew any books written by any experts on the subject of the wool used in these Indian blankets? A. There is a data and reports.

Q. When you say books, you mean these Smithsonian Institute reports? A. And other ones.

Q. What other book? A. Other book treating on the subject of Navahoe blankets.

Q. What book? A. I don't know the name now,

5048 Q. Don't you know the name of the author? A. I do not, no.

Q. Did you buy a book on that subject? A. Such a book could be bought yet to-day.

Q. Did you buy a book on that subject? A. I did.

Q. Where did you buy it? A. I do not recollect. From a dealer in old books.

Q. How many years ago? A. Ten or eight years ago.

Q. What did you do with this book? A. Many of those books I sold again.

Q. What did you do with that particular book? A. I don't know what particular book.

5049 Q. It wasn't among the books that were lost on the *Bourgogne*, was it? A. It may have been.

Q. You didn't mention it when you gave a list of the books? A. It is not mentioned as being on the manufacture fo Navahoe blankets. For instance, "Schoolcraft"—there is a lot in "Schoolcraft" about Navahoe blankets.

Q. You didn't mention that book in the list that you gave of the books that you lost on the *Bourgogne*, did you? A. I guess not. "Schoolcraft" also—

Q. How did you know that these were Navahoe saddles? A. The same way; I could tell if I saw

5050 them.

Q. What were thew made of? A. Some were made of buckhorn covered with buffalo hide, and the other was made of wood and covered with buffalo hide.

Q. How old was the oldest of them? A. From the time they were killing buffalo.

Q. How long ago was that? A. Fifty years ago, forty, twenty years ago, I guess they were killing.

Q. Don't you know whether it is fifty years ago or twenty years ago since they killed buffalo out west?

A. During the period when they were killing 5051
buffalo.

Q. That is the nearest you can come to giving the age of these saddles, is it? A. Exactly.

Q. And is that the reason you say they were old, because they were covered with buffalo hide? A. That is one of the reasons.

Q. That is the reason you select to give, is it? A. That is the reason I select to give, yes.

Q. What was the name of this Sioux Indian that painted that teepee? A. Which teepee?

Q. The one that counsel just asked you about? A. I said before, I don't remember.

Q. Did you ever know? A. Very likely I knew. 5052

Q. Did you ever know? A. Possibly I know.

Q. Don't you know whether you ever knew the name of the Indian that painted that? A. Yes, I know it.

Q. Who told you? A. I do not remember; when I purchased the teepee, probably.

Q. When did you forget his name? A. I don't know when I forgot it; I didn't take no note of it.

Q. To what tribe of Sioux did he belong? A. Sioux.

Q. What tribe of Sioux? A. I do not remember.

Q. Isn't that an important matter in collecting such curiosities as that, to know what tribe of 3053
Sioux it comes from? A. It certainly is.

Q. And don't you know now what tribe of Sioux that teepee came from? A. By the photography?

Q. No, don't you know by what you were told by the person who painted it? A. No. I testified once before that there is no collector could tell you by photographs to what tribe it belongs.

Q. And you still say that, do you? A. I still say that.

Q. It makes a difference in the value of it, don't it, what tribe it comes from? A. None at all.

5054 Q. You never heard in your experience as a collector that it made any difference in the value of an article what tribe it came from? A. If it was from the Sioux.

Q. So long as it was a Sioux it made no difference what tribe; is that right? A. It wouldn't make any difference, no.

Q. To any collector? A. Not of my knowledge.

Q. It wouldn't made any difference to you, would it? A. And other collectors.

REDIRECT BY MR. BENEDICT:

Q. Can the ancient pictography made by the In-
5055 dians anciently be easily distinguished from pictography made at present? A. By a connoisseur, yes, sir.

Q. Are you able to distinguish them?

Objected to as incompetent.

A. Yes, I am. I think I could give a satisfactory explanation.

Q. How do you define the difference? How could you tell the difference between them?

Objected to; the witness has not shown himself competent. Allowed.

5056 A. In the first place I would detect an imitation from a genuine piece of pictography from a copy or tracing of pictography the tracing would be just one line all over; for instance, a horse, the tracing would just represent one line all over; while an Indian in tracing is going by freehand, you will find many lines which are discontinued. The point most important is about the color; a man who would make a pictography would use a dye color; while the Indians were making their own colors, mineral colors; the black originally would be charcoal, the red would be Indian red, and the yellow would be

ochre, and the white—I forget, it is a sort of stone 5057
which they are scraping out and making the color. I know also in fixing the color—to fix the color a man making an imitation of pictography, they are generally using a fixative made of gum, shellac or alcohol; while the Indian was using generally fat or some brain of animals to fix the color, to run over the color which would make it indelible, so the color wouldn't come off. The shadows of this pictography originally are soft and grayish, while the pictograph made by the white man is generally of a rough nature, made by shellac used to dry the color. Any man knowing anything will know an imitation from a genuine. 5058

By Mr. Haldane:

Q. If the white man used the same pigments that an Indian did, you couldn't tell the difference, could you? A. He cannot imitate the drawing of an Indian, as I have before to that effect testified.

Q. If he used the same materials you couldn't detect the difference by the touch that you have just described, could you? A. Providing he knew how to use it.

Mr. Haldane: I wish to ask counsel whether he is prepared now to produce or whether he intends to 5059
produce a statement descriptive of the articles contained in this collection or of any of them.

Mr. Benedict: Mr. Deslions has prepared a description as well as he could.

Mr. Haldane: I want to be allowed to take that and examine him about it if we feel inclined to examine him about it later on.

Mr. Benedict: I will give it to you now if you will put it in as his cross-examination. I don't propose to give it to you unless it goes in evidence.

Mr. Haldane: I want an opportunity to between

5060 now and the next session to determine whether I want to cross-examine him about it.

The Commissioner: I understood that this was prepared for the purpose of saving time in the cross-examination of the witness.

Mr. Benedict: Mr. Deslions has prepared a description which counsel requested him to prepare, and I offer it to the counsel if he puts it in evidence, if it goes in evidence as Mr. Deslions's cross-examination.

Mr. Haldane: That I decline to do.

Mr. Benedict: I have it here, if you wish to use it. I propose to rest, but I have another witness whom
5061 I want to call but he is out of town and I don't know when I can get him. It is Mr. Seton and his testimony will be similar to the testimony of Mr. White to-day in many particulars, and it seems to me that if I could have the opportunity of putting that witness on the stand whenever I can get him that the other side may go on with their examination at the next hearing.

Mr. Haldane: No, I should particularly like to have Mr. Seton on the stand before we commence.

Mr. Benedict: I don't know when I can get him. If the other side decline to go ahead until I am through I will endeavor to get through as soon as
5062 I can and we will take an adjournment with the understanding that if in the meantime I can find him and that he will be here on any day so that I can get him between then and New Year's counsel will come on one day's notice.

Mr. Haldane: Certainly we will accommodate you; I don't think there is any doubt but what we can.

Adjourned to Monday, December 29, 1902, at 2 P. M., with the understanding that if the witness can be secured before that day counsel will endeavor to examine him.

NEW YORK, December 29th, 1902. 5063

Met pursuant to adjournment, parties being present as heretofore stated.

Mr. Benedict: When we adjourned I stated that I hoped to get Mr. Seton by to-day as a witness. I have seen Mr. Seton since, and find that he never saw but a small portion of this collection just before it was shipped, and he saw so little and his memory is so slight about it that I did not think it worth while to trouble him to come down here, and I do not propose to call him.

With the entry in the minutes that any testimony 5064
that was taken on the trial that either party desires to refer to may be used, I rest.

Mr. Kopf: I should like to make the same reservation with regard to the taking of proofs on the part of the Company as was made in regard to the other claims; that is to say, when all the evidence on the direct with regard to all the other claims required to be proved is in, then I may go on.

Mr. Benedict: I ask counsel what he is going to do about the Dental Company claim?

Mr. Kopf: I will let you know some day this week.

The Commissioner: When will the Company
begin to put in its proofs as to the claims that have 5065
already been offered? The understanding was, I think, that counsel for the Company was to notify the other side whether he was going to put in any evidence about them.

Mr. Kopf: As to all the claims except the Deslions' claim, I can begin in ten days; and I can begin the Deslions claim in two weeks.

The taking of testimony on behalf of the Company in the Deslions claim is adjourned to January 12th, 1903, at 2 P. M.

5066 NEW YORK, January 9, 1903.

Met pursuant to adjournment.

Present—The COMMISSIONER:
Mr. MURRAY, for the Claimants;
Mr. KOPF, for the Company.

Mr. Kopf: I shall have to ask for an adjournment of this examination on the ground that I have not been able to get a witness here. This witness was the second purser of the *Bourgogne* and, under the contract of passage, in order to hold the Company responsible for the loss of any article it had to be
5067 deposited with the purser, and a receipt given. I expect to show by this witness that none of these claimants had deposited their jewelry and money and specie with the purser. I telegraphed for that witness and found that he left Havre on the 26th of December on a voyage which will not bring him back to Havre until the 18th of February, and I am obliged to ask for an adjournment until some time about the first of March.

Mr. Murray: I object to the adjournment. If the witness does not happen to go back to Havre, and if it is absolutely necessary to have him, the counsel can telegrah for him and have hime come to New
5068 York. He has been here before. There is no question in the case in regard to the passage ticket; there are no pleadings, there is no proof of any ticket or any stipulation of that kind. I think if there is to be an adjournment on that ground that this ticket should be offered in evidence.

Mr. Kopf: The ticket is in evidence and is on file in this Court.

The Commissioner: I will consider this matter on Monday.

Adjourned to Monday, January 12, 1903 at 2 P. M.

NEW YORK, January 12, 1903. 5069

Met pursuant to adjournment.

Counsel for *La Bourgogne* applies for an adjournment of ten days, to which counsel for Deslions consents on the understanding that counsel for the *Bourgogne* will go on at that time.

Mr. Murray objects to the adjournment.

The Commissioner rules that the cases may all be adjourned until Thursday, January 22, 1903, at 2 P. M.

5070

NEW YORK, January 22, 1903.

Met pursuant to adjournment.

Present.—The COMMISSIONER;
Mr. MERRIAM, for Knowles;
Mr. KOPF, for the SS. Company.

Counsel for Knowles, as administrator, offers in evidence the original letters of administration granted to Henry Hyer Knowles, on the goods, chattels and credits of Gertrude Lalla Rookh Knowles, deceased, on December 6, 1899, by the Surrogate of the County of New York. 5071

It is marked Claimant Knowles Exhibit 1, January 22, 1903.

Adjourned to Tuesday, January 29th, at 2 P. M.

JANUARY 29, 1903.

Adjourned to Tuesday, February 3, 1903, at 2 P. M.

5072 FEBRUARY 3, 1903.

Met pursuant to adjournment.

Present—The COMMISSIONER;
Mr. BENEDIT;
Mr. HALDANE and
Mr. KOFF.

MICHAEL BERGIN, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Haldane:

5073 Q. Are you an officer of the Municipal Court? A. I am.

Q. What district? A. The Third District.

Q. What is your position there? A. Court attendant.

Q. You were subpœnaed, were you not, to bring with you the judgment roll in the case of one Louis Marquet against George Deslions? A. Yes.

Q. (Handing witness papers.) Are these the papers? A. Those are the papers.

Mr. Haldane offers in evidence the summons in the case of Louis Marquet *vs.* George Des-
5074 lions in the Municipal Court of the City of New York, Third District, Borough of Manhattan, dated the 15th day of June, 1898, and returnable on the 23d day of June, 1898; also the proof of service of the summons endorsed upon the summons, and the memorandum of judgment, also endorsed thereon by William F. Moore, Justice of the Court, together with the memorandum of the Court, and it is agreed that copies may be substituted.

Mr. Benedict objects to the introduction of

the papers above referred to, as immaterial and 5075
incompetent, and——

Objection overruled. Exception.

Mr. Benedict: I object further on the ground that it appears that the defendant appeared by his wife.

The Commissioner: I still so rule.

Exception.

The copies are marked "Deslions Claim, Petitioner's Exhibit No. 1."

Mr. Haldane offers in evidence an execution issued upon said judgment, dated the 23d day of June, 1898, together with the return of the Marshal thereon, and asks leave to substitute 5076
certified copies.

Mr. Benedict: I object as entirely immaterial and incompetent, and that the petitioners are bound by the previous testimony.

Same ruling and exception.

The copies are marked "Deslions Claim Petitioners' Exhibit 2."

Mr. Haldane offers in evidence a further execution of later date, in the same case, issued June 27, 1898, together with the return of the Marshal thereon, and asks leave to substitute certified copies. 5077

Same ruling and exception.

It is marked "Deslions Claim, Petitioner's Exhibit No. 3."

Mr. Haldane offers in evidence transcript of judgment in the case of Marquet *v.* Deslions, in which he has just offered the other papers.

Same objection, ruling and exception.

The same is marked "Deslions Claim, Petitioner's Exhibit No. 4."

No cross-examination.

5078 PAUL FAGUET, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Haldane:

Q. Where do you live? A. At Havre, in France.

Q. What is your business? A. My business is chief of traffic; freight agent of the Compagnie Generale Transatlantique.

Q. At Havre? A. At Havre.

Q. How long have you been in the employment of the Compagnie Generale Transatlantique? A. Nineteen years.

Q. Were you employed by them in New York in
5079 1898? A. Yes.

Q. What was your position with the Company in July, 1898? A. I was assistant agent.

Q. Who was the general agent here at that time? A. It was Mr. de Bocandet.

Q. Where was he on the second day of July, 1898, when the steamship *Bourgogne* sailed? A. Mr. de Bocandet was in France at that time.

Q. Who took his place while he was gone? A. I took his place; I was acting agent.

Q. Were you on the dock on the morning of July the second before the *Bourgogne* sailed? A. Yes, sir.

5080 Q. Who was the Company's agent in charge of the freight at that time? A. It was Mr. Cauchois at that time.

Q. Is he still in the employment of the Company? A. Yes.

Q. What position does he hold now? A. Now he is freight agent and assistant agent.

Q. What was his position in July, 1898? A. He was freight agent.

Q. Do you know a man named George Deslions? A. I saw him once or twice.

Q. You know about the claim, don't you, that

Mr. Deslions makes for the loss of a collection of 5081
Indian curios? A. Yes, I know about that.

Q. Did you see him on the morning when the *Bourgogne* sailed? A. Yes, sir.

Q. Where? A. On the dock.

Q. What time in the morning was it? A. About half-past nine.

Q. Had you ever seen him before that? A. I don't know.

Q. What did he say to you? A. Mr. Deslions told me that the baggage master had registered some trunks to Basle and he wanted to have the baggage at Havre, registered at Havre; and I told him "All right; it is possible; I will give orders to 5082
the baggage master," and I saw the baggage master and I gave orders to register the baggage only to Havre.

Q. Did Mr. Deslions have any passenger's ticket? A. I didn't see any; it was a matter of the baggage master.

Q. What did Mr. Deslions say these trunks were; baggage, or freight? A. Baggage.

Q. Did you charge him anything for sending this baggage to Havre instead of to Basle? A. I think so; because he had several trunks, and the baggage master must charge for extra baggage.

Q. What do you mean by baggage? The personal 5083
effects of the passenger?

Objected to. Objection sustained.
Mr. Haldane excepts.

Q. How did you explain to Mr. Deslions your reasons for charging him more money to send these trunks to Havre? What did you say to him? A. I charged for extra weight.

Q. What did you say to him about the extra charge? A. I don't understand what you mean.

5084 Q. When you told Mr. Deslions that he had to pay more money what did you say to him?

Objected to as leading.

A. That he must pay the extra charge.

Q. What do you mean by extra charge?

Objected to. Objection overruled.

Mr. Benedict excepts.

A. Each passenger can take with him 150 kilos of baggage; about 300 pounds; if he has more he must pay extra; an extra charge for baggage.

Objected to.

5085 Q. How much did this baggage weigh, do you know? A. The weight was about 900 kilos; eight or nine hundred kilos.

Q. Under your regulations the passenger was only entitled to take 150 kilos; is that right?

Objected to on the ground that the regulations speak for themselves.

Objection sustained, if there are printed regulations.

Mr. Kopf: It is perfectly obvious that the original tickets were on the *Bourgogne* collected by the purser, and went down with her, and we proved in this case the form of passage ticket and it is an ex-
5086 hibit in this case.

Mr. Benedict: I think you are mistaken. I think you will find that all that was put in evidence from the passage ticket was the clause with reference to the passage money not being payable back in case of loss. We have repeatedly called on you to produce a passage ticket in this case, and it has never been produced.

Q. (Handing witness book.) Look at this book and state what it is? A. This book is the dock book.

Q. What does it contain? A. The book is to reg- 5087
ister the tickets which are exchanged on the dock.

Q. Does this book contain anything relating to freight matters? A. No.

Q. What is it? Is it confined to passenger business? A. Only to passenger business.

Q. Look on page 39 of the book and say whether or not you find there the name of Matile Faivre?

Objected to on the ground that the book is the best evidence.

A. Yes.

Mr. Haldane offers in evidence the following, from page 39 of this book: In a separate 5088
column, under the names of the passengers is the number 51[illegible], preceding the name "Matile Faivre"; the heading "Paquebot," under which is "La Bourgogne"; next the heading "Class"; next, "Number of ticket going," under which is the number 51221; next column, "Number of ticket returning"; next names of passengers, "Matile Faivre"; next is "C. G. T," under which is the number "2550"; next "Number of tickets," under which is "Bale 17309"; next, "Number of Orders"; next "Amount," under which is the figure "1"; next "Transfers"; next "Number of tickets"; next "Amount," under 5089
which is "6 40," and next "Total," under which is "32 90"; next "Account Current," under which is "32 90"; and then "Observations," under which is "Zwil 28886."

Q. With reference to the entry 2550 on this book, opposite the name of "Matile Faivre," what does that mean? A. That is the regular price from New York to Havre.

Q. What class? A. Third class.

Q. With reference to the number below and the

5090 number 17309, following the last entry referred to, what does that mean? A. That is the number of the railroad ticket from Havre to Basle.

Q. Under the head "Amount" there is a figure "1"; what does that mean? A. That is one dollar that is paid by the passenger, that we pay to the French Government for each passenger at Havre; we are obliged to pay that to the Government.

Q. Under the head of "Transfers" there is "6 40"; what does that mean? A. $6.40 for the railroad fare from Havre to Basle.

Q. Then under the head of "Total" there are the figures "32 90"; what does that mean? A. The total
5091 of the steamer fare and one dollar for the Government, and the railroad fare, that makes the total.

Q. Under the head of "Observations" are there letters "Z w i l," followed by "28886"; what does that mean? A. It is the name of our agent, Mr. Zwilschenbart.

Q. Your agent where? A. He has many agents in the United States; perhaps from New York.

Q. What does that indicate that Zwilschenbart had to do with the ticket? A. I suppose he had given an order on the Company to exchange for a ticket.

Q. And what does the number 28886 mean? A. It is the number of the order of Mr. Zwilschenbart.

5092 Q. Under the same headings and the same columns with the succeeding number 51222 are a similar lot of entries; what is that opposite No. 51222? A. That is "Nour."

Q. What does that mean? A. A little baby; less than a year old.

Q. And under the name "Faivre" is a ditto, the same name; under the "25 50" are the figures "2 10"? A. That is the regular fare for a nursing child; less than a year old, $2.10.

Q. Under the column headed "Amount" is the figure "1"; what does that mean? A. One dollar to

be paid to the Government for the baby; each pas- 5093
senger.

Q. And under the head of "Total," opposite the baby, are the figures "3 10," what does that mean? A. That is the total of the price paid to the French Government and the price paid for the baby on the steamer.

Q. Under the head "Observations," opposite these entries about the baby there is something; what is that? A. That is ditto; it would indicate that those two people were under the same order for a ticket.

Q. What is the total of all the charges for "Matile Faivre" and the baby? A. $36. 5094

Q. I show you a paper and ask you if that paper was issued at that time by the Compagnie Generale Transatlantique? A. Yes.

Mr. Haldane offers in evidence the order for the ticket referred to in the testimony of the witness just given, for Matile Faivre and infant, bearing the same number 28886, and issued by the agent, Zwilschenbart.

Q. Can you read the stamp on it? What name is on it? A. Mr. Zwilschenbart.

Q. What does that licate? That stamp. A. That stamp has the marks of the agent who was 5095
given the order.

Q. Is there anything on that paper to indicate to you where that order was exchanged for a ticket? A. Yes, sir, that stamp; "Compagnie Generale Transatlantique; Dock, July 2nd, 1898, Agence de New York."

Q. What does that last mentioned stamp indicate? A. It indicates that the order has been presented on the dock to the Passenger Department, and has been exchanged for a steamer ticket of the Company.

5096 The paper above referred to is offered in evidence and marked Deslions Claim, Petitioner's Exhibit No. 5.

Q. I show you now a sheet of paper, the headings of which are in the French language; will you please say what it means in English? A. Compagnie Generale Transatlantique; Agency of New York; Bordereaux, the list of baggage of the steerage, registered directly from New York to Basle; departure of steamer *La Bourgogne*, second of July, 1898.

Q. I call your attention to a line here on which appear the same figures and number as in the book
5097 to which you have just referred; the figures "17309"; what do the figures on that line indicate? Take the first column in which is "166," what does that mean? A. 166 is the number that was put on the trunks; the countermark that was put on the baggage.

Q. Under the next column, which is headed "Voyage" is the figure "1"; what does that mean? A. I don't understand what that means.

Q. The next column has "Colis"; what does that mean? A. Trunks.

Q. Under the column on the same line is the number "8"; what does that mean? A. It is the
5098 number of the trunks; eight pieces.

Q. In the next column, which is headed "Poids brut," what does that mean? A. It is the total weight.

Q. What is that weight calculated in? Is it in French or American weight? A. It is calculated in French weight.

Q. What is the name of the weight? A. Kilos.

Q. Under that column are the figures "952," what does that mean? A. 952 kilos.

Q. The weight of the eight trunks? A. Yes, the eight trunks.

Q. Here is another column which is headed "En 5099
registrement"; what does that mean? A. It is the sum that is paid for a stamp.

Q. Under that column are the figures "02"; what does that mean? A. Two cents for a stamp.

Q. Then in the last column is the number 17309; that is the number of the ticket to Basle? A. That is the number of the ticket of the passenger to Basle.

Q. To which department of the Company's business does this sheet belong; the passenger, or freight? A. It is the business of the superintendent of the dock.

Q. But you have two departments, passenger 5100
and freight? A. Yes; for the baggage it is the superintendent of the dock; for tickets it is the Passenger Department.

Q. When you saw Mr. Desloins on the morning of the second of July, 1898, did he say anything to you about freight? A. No, sir; about freight? No, sir.

Q. At that time had you anything to do with the freight department? A. No, sir, I was acting agent, and it is Mr. Couchois who was freight agent, and I had nothing to do with that.

Q. Then why did Mr. Deslions have to see you about these trunks; what did he want? A. He told 5101
me that the baggage master had registered the trunks to Basle, because on the ticket for final destination was "Basle," and he told me "I want to have the baggage at Havre instead of Basle; is it possible?" I told him "Yes, it is possible; I will give orders to the baggage master," and I told the baggage master "You will register the trunks of this gentleman to Havre instead of Basle."

Q. Did you see these trunks? A. I don't think so.

Q. Do you remember how many pounds they

5102 were in excess of the weight allowed to each passenger?

Objected to on the ground that the regulations will tell.

Question withdrawn.

Q. Did you say anything to Mr. Deslions about these trunks being overweight? A. I told him "If you have extra weight you must pay for extra."

Q. What did he say to you? A. He said—I don't remember—he said something about it; probably told me "All right, I will pay."

Q. Mr. Deslions has sworn that he shipped these
5103 trunks as freight. Supposing Mr. Deslions had told you these were freight; what would you have done?

Objected to as immaterial. Objection overruled. Mr. Benedict excepts.

A. I would have told Mr. Deslions that it was not possible, because we have never taken freight on the morning of the departure, on the dock, and Mr. Deslions must go to the freight department at Broadway, to propose his freight, and that he must get permission to embark from the freight department of the Company; and in the morning of the
5104 departure all the manifests and papers are closed the night before, and it is simply impossible to take freight on the morning of the departure of the boat; we never have done it.

Q. When your Company receives freight from a shipper what papers do you make out to give to the shipper?

Objected to as immaterial. Objection overruled. Mr. Benedict excepts.

A. A bill of lading.

Q. Mr. Deslions has testified that he received

from you at the time that he had this talk with 5105
you, on the morning when the boat sailed, a yellow paper called a countermark; did you give him any such paper as that? A. Never; that was for the baggage master; he was on the dock, and that is a matter of the employees.

Q. Did your Company at that time give a shipper of freight a yellow paper called a countermark? A. No, sir; at that time bills of lading were blue I think.

Q. What did you use a yellow paper, called a countermark, on? A. It is a mark that is put on a trunk with a number; it is a paper that we put on the baggage that is registered, it is the same paper 5106
that we give duplicates of to the passengers with the same number and we put on that paper the number of pieces.

Q. Do you put that sort of a paper on anything except the personal baggage of the passengers?

Same objection, ruling and exception.

A. Only on the personal baggage.

Q. Did your Company receive and ship personal baggage for any persons except passengers?

Objected to as immaterial; same ruling and exception.

5107

A. Only for passengers.

Q. If Mr. Deslions wasn't a passenger on the boat could he get any personal baggage sent unless he paid for it as freight? A. No, sir.

Q. He could ship it as freight, couldn't he? A. As freight he could send a package; but as baggage he could not.

Q. Mr. Deslions has testified that he told you when he shipped these trunks that they were worth $100,000; what would be the freight on $100,000

worth of goods from New York to Havre? A. The freight is one-half of one per cent.

Q. Did he say anything to you that morning about the value of the goods in those trunks? A. Never did he talk with me about it.

Q. Supposing he had told you that those trunks contained property worth $100,000; what would you have had to do?

Objected to as immaterial; same ruling and exception.

A. I would have told him immediately "I can't receive it as baggage; we can take only personal effects as baggage."

Q. Did you see Mr. Deslions after the *Bourgogne* was lost? A. Yes, sir.

Q. How soon after, about? A. One or two days after.

Q. Where? A. In my office.

Q. Where is that? A. It was at that time 3 Bowling Green.

Q. Did you have any conversation with him? A. Yes.

Q. What was that; what did you say and what did he say? A. Mr. Deslions came in my bureau and told me "I have lost my baggage and wife and child." I told him "Oh, my poor man"; I was very much affected at that time, because everybody came in my office, and I told him "My poor man, I am very sorry that you have lost your wife and child"; but I have had a bad impression of Mr. Deslions at that time, because he told me "Oh, yes, my wife and child, but my baggage, it was a collection very important for me, and I lost it all; it is a great loss for me." I said "Well, I can do nothing about it."

Q. What did he say, if anything, about how much his collection was worth? A. At that time?

Mr. Deslions told me it was of very great value; 5111
probably 25,000 francs.

Q. Have you ever seen him since that time? A. No, I don't think so; perhaps he came in three or four days after again, but after that I have never seen him.

Q. Did you and he talk in French? A. Yes, we talked French; I talked always French with him.

Q. Mr. Deslions has testified that these trunks were first of all shipped to go to Paris; do you know whether that is so or not? A. No, sir, it is not possible, because Mrs. Faivre had a ticket to Basle; then the trunks had been registered to Basle first, and not to Paris, and Mr. Deslions asked me to reg- 5112
ister them to Havre.

Q. Mr. Deslions has testified, on page 99, that after the trunks were put on board he asked you for a receipt; is that so? A. No, sir, because I was acting agent, and it was not my business to give receipts for the baggage. When Mr. Deslions came to me and asked me to have the baggage registered to Havre I gave orders to the baggage master after; I had not talked with Mr. Deslions; that was simply between Mr. Deslions and me.

Q. Mr. Deslions has testified on page 99 that you told him you would see Captain Deloncle about these trunks; did you have any such talk as that 5113
with him? A. No, sir; Mr. Deslions was a passenger, and I spoke with him perhaps one minute; and that is all.

Q. Mr. Deslions has testified that you gave him a yellow countermark. Did you? A. No, sir, certainly not; I was not an employee on the dock, but I was acting agent and I had large business at that time.

Q. Mr. Deslions has testified that you said to him "When you come to Havre present this coun-

5114 termark"; did you say that to Mr. Deslions? A. No, sir, it is untrue.

Q. Did Mr. Deslions say anything to you on the morning that the boat sailed, about what was in those trunks? A. No, sir, absolutely nothing about it.

Cross-examination of this witness suspended until to-morrow, Wednesday, February 4, 1903, at 3 P. M.

NEW YORK, February 4, 1903.

5115 Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT,
MR. HALDANE and
MR. KOPF.

PAUL FAGUET'S examination resumed:

By Mr. Haldane:

Q. You were asked at the last examination what the agent Zwilschenbart had to do with the ticket, and your answer reads "I suppose he has given an
5116 order from the Company to exchange for a ticket." Did you say he gave an order from the Company? A. I mean he has given an order on the Company to exchange the ticket; it was Mr. Zwilschenbart who ordered the company to give the ticket against the order that he delivered to Mr. so and so.

Q. You testified yesterday that you had been in the employment of the Company nineteen years. Do you wish to change that answer? A. Yes, it is a mistake; I have been with them sixteen years; since February, 1887.

CROSS-EXAMINED BY MR. BENEDICT: 5117

Q. Who was the general agent here in New York of the Company before Mr. de Bocandet? A. It was Mr. Forget.

Q. When did Mr. Forget cease to be the general agent? A. In 1897, in November.

Q. When did Mr. de Bocandet come here? A. Mr. de Bocandet was here at that time.

Q. But he was not here in the following June? A. No.

Q. When did he leave here before that? A. In June I think.

Q. And you took his place here while he was gone? A. Yes, sir. 5118

Q. How long did you remain here as general agent? A. During the absence of Mr. de Bocandet.

Q. How long was that? A. Since the departure of Mr. de Bocandet, I think the middle of July; I was acting agent when Mr. de Bocandet was in France at that time. He left New York in June, about the middle of June, I think, and he arrived here 12 or 14 days after the accident, after the loss of the *Bourgogne*. In the middle of July, I don't remember exactly the date.

Q. And in the meantime you filled his place here? A. Yes, during that time.

Q. You have been shown this order "Petitioner's 5119 Exhibit 5"; when did you first see that paper? A. Yesterday.

Q. You have never seen it before? A. No.

Q. When was the first time that you had seen this Bordereaux? A. Yesterday, or perhaps the day of the departure of the *Bourgogne* because I looked at that time to see if it was all right, but I don't remember this.

Q. In the order of business you would see that paper on the day of the departure of the *Bour-*

5120 *gogne*, would you not? A. No, I can't look at all the papers of the Company.

Q. Didn't you say that you probably saw that paper on the day of the *Bourgogne's* departure? A. It is not probable, except if some employee told me to look at it, but it is not probable that I saw that paper.

Q. You said that you understood that the packages which Mr. Deslions had weighed about 900 kilos; how did you learn the weight? A. Because I remember when I was on the dock Mr. Deslions told me I have some baggage; many packages, the weight is 900 perhaps. When Mr. Deslions talked
5121 to me about his baggage the baggage had been registered to Basle.

Q. How do you know the baggage had been registered to Basle? A. Mr. Deslions told that to me.

Q. Did you go then to inquire whether that was so? A. No, because Mr. Deslions had a ticket from New York to Basle.

Q. Did you see that ticket? A. At that time——

Q. Did you see that ticket at that time? A. I don't remember. I remember that Mr. Deslions showed me a ticket.

Q. Which you saw? A. Yes, but I don't remember the name of the passenger who had the ticket.

5122 Q. He showed you a ticket? A. Yes.

Q. Did that ticket say anything about the weight of the package? A. No, sir.

Q. How did you know the weight of the baggage then? A. Because Mr. Deslions told me "My baggage is registered to Basle," but I will go only to Havre and I to pay a certain sum for extra baggage and I suppose that I will have that baggage at Havre; then I have not to pay the railroad fare for baggage from Havre to Basle; the weight is so and so.

Q. Do you remember that he told you the 5123
weight? A. Yes, he told me the weight.

Q. You went with him then to the baggagemaster, did you not? A. Yes, sir.

Q. What was the name of the baggage-master? A. I don't know, there are many employees——

Q. You instructed the baggage-master there, did you, to take it off from the registration for Basle? A. I told the baggage-master not to register the baggage to Basle, but to Havre only.

Q. In accordance with your instructions what did the baggage-master do? A. I suppose that he did that.

Q. That is, to register the baggage for Havre? 5124
A. For Havre.

Q. This Bordereaux that has been shown to you, is it not a Bordereaux for the passengers going directly from New York to Basle? A. Yes, sir.

Q. And you find, do you not, that the package which you have spoken of as weighing 952 kilos was originally on this list? A. Yes.

Q. Don't you also find it stricken out; just look at it. Isn't it stricken out all through? A. I don't know.

Q. You see yourself, do you not, isn't it stricken out? A. I see a line through it.

Q. An erasure? A. Yes. 5125

Q. Let me ask you again, will you count up the number of two cents in the line which was for the stamps, leaving out the stamp which is stricken out, and see how many there are.

Mr. Benedict: Count from 1 to and including 25.

A. Yes, that is right.

Q. That would make 50c., and the column is added up 50c., is it not? A. Yes.

Q. And the footing of that column is 50c.? A. Yes.

1714

5126 Q. That leaves out the figure "2" which is stricken out, does it not? A. I don't understand it.

Mr. Haldane: It is admitted that the figure "2" is left out.

Q. Will you see how much in the heading of "Totals" the footing is and see whether the figure "2" that is stricken out is not also left out of that?

Mr. Haldane: It is agreed that the paper shows that the line upon which this particular baggage was listed has got a pencil mark right through it and that the 2c. is left out.

Q. Then it is the fact, is it not, that the baggage
5127 of Mr. Deslions is not left upon that Bordereaux, which was produced to you yesterday? A. It had been put on that Bordereaux.

Q. And then stricken out? A. Perhaps when—

Q. What is the fact, is it there, or is it not? A. I can't tell what the employee might do.

Q. If there was a change made in the destination of that property it ought to go on another list, ought it not? A. If we had time——

Q. Well, it ought to have been put on another list, ought it not? A. I don't know if he has put it anywhere else.

Q. Do you know that it was his duty to put it on
5128 another list? A. Sometimes, he has no time to do that.

Q. Don't you know it was his duty to do so? A. If he has time, yes.

Q. Have you ever seen any other list of baggage on which that property was specified? A. No, sir.

Q. You saw the package yourself? A. I don't remember.

Q. You won't say you didn't see it, you say there was several? A. Perhaps I saw it, perhaps not. There was many packages; perhaps I saw them, I don't remember.

Q. Didn't you see the baggage-master change the 5129
countermark on the trunks? A. No, I didn't see him do that because I spoke only one minute with Mr. Deslions and then I went away.

Q. You directed him to change the countermark? A. Yes.

Q. And change from Basle to Havre? A. Yes.

Q. Didn't you say that he did make that change? A. I don't remember.

Q. You will not swear that you didn't see him, will you? A. I cannot.

Q. The order to change the countermark required, did it not, that the countermark should be given to Mr. Deslions after it had been changed? 5130

Mr. Kopf objects as based upon an incorrect statement of the evidence, the witness has not said anything about a countermark being changed.

Objection overruled; exception.

A. The countermark must be changed on the baggage. He must remove the countermark of Basle to put a countermark of Havre.

Q. And must also give the new one to Mr. Deslions, must he not? A. I don't know if he did.

Q. Was that his duty? A. I don't know if he had given a countermark for Basle. 5131

Q. Whether he had or not, it would be his duty, would it not to give to Mr. Deslions a countermark for Havre? A. Mr. Deslions asked me just to change the destination of the baggage; then I suppose that he refused the check to Basle and he came and asked me "I will have my baggage at Havre," that is all.

Q. Wasn't it necessary that he should have the countermark for Havre? A. Not absolutely necessary.

Q. How could he get his baggage at Havre with-

5132 out having the countermark? A. Sometimes we have some baggage *en souffrance* that would be put on board without countermark; only baggage *en souffrance*. But in that case Mr. Deslions must have a countermark to Havre.

Q. So that countermark must have been given to him by the baggage-master, must it not? A. The baggage-master must give a countermark.

Q. You don't recollect, as I understand you to say, whether you saw the baggage-master give that countermark? A. No.

Q. Will you say that the baggage-master did not give the countermark to you and you give it to Mr.
5133 Deslions? A. I am sure no.

Q. Are you sure of that? A. Sure that I have not given the countermark to Mr. Deslions.

Q. Did you make the arrangement with reference to how much additional Mr. Deslions was to pay? A. Yes.

Q. Did you arrange it with him? A. Mr. Deslions told me "I have an excess of baggage to pay, it is about eight or nine hundred kilos"; I can't certify eight or nine, but it seems that it was that weight; and I told him "All right, you will pay the extra charge for the baggage."

Q. Did you arrange with him how much he was
5134 to pay? A. No, sir.

Q. Here are on this Bordereaux 140 to 169, twenty-nine different lists of baggage. A. Yes.

Q. In how many of those packages are the weights under 100 kilos? A. Sixteen.

Q. Sixteen out of the twenty-nine are less than a hundred? A. Yes.

Q. That is about the ordinary amount that such passengers carry for personal baggage, is it not? A. I don't know; that is not my business.

Q. How much is a kilo, how many pounds? A. About two pounds.

Q. It is two pounds and one-fifth, is it not, ex- 5135
actly? A. I don't know; I don't think so.

Q. That 950 kilos would be over 2,000 pounds, of weight? A. Yes.

Q. Would you understand that a passenger with such a ticket would have 2,000 pounds of personal effects? A. It is very possible.

Q. You think it is very possible? A. Yes.

Q. Did you ever know of such a case? A. That is not my business.

Q (Repeated.) Did you ever know of such a case? A. I am not the baggage-master.

Q. (Repeated.) Did you ever know of such a case? A. I never looked for that. 5136

Q. Did you ever know of any such case as a man carrying for baggage 2,000 pounds? A. I never looked at that; it is not my business.

Q. I don't ask whose business it it; I asked did you ever know of such a case as a man having 2,000 pounds of personal effect?

Objected to as immaterial. Objection overruled. Exception.

A. Never did I look for it; it is perhaps the first time that I ever looked at the list of baggage; but I can tell you that I saw first-class passengers who have many baggages like that. 5137

Q. Did you ever see a passenger on the third-class ticket who had 2,000 pounds of personal effects? A. I don't know the weight; I never saw the weight, but I see the baggage, and very often one passenger has two, three or four large cases of baggage with him; I don't know the weight.

Q. What is the largest number of weights on that list, below this 952 kilos; what is the largest one after that? A. 324.

Q. What is the meaning of that "*en souffrance*," in English? A. Probably——

5138 Q. Don't you know what that means? A. Yes; it is baggage that is sent to Havre because it has been left by the boat before.

Q. You say baggage that has been left behind? A. Yes.

Q. Do you remember Mr. Deslions saying that he wanted to give some money to his wife, he said he had another favor to ask of you, and wished to get some money to his wife; do you remember that? A. No, sir.

Q. Don't you remember that he gave you a twenty-dollar bill and that it was put in an envelope to be given to Captain Deloncle? A. No, sir, I am
5139 sure not.

Q. You have no memory of that? A. I am sure not.

Q. Didn't he ask you if he could go on board the steamer to speak to his wife? A. I don't remember that.

Q. And didn't you tell him that he couldn't go on board the steamer; didn't you ask him what he wanted to go on board for? A. No, sir.

Q. And didn't he say that he wanted to give some money to his wife? A. No, sir.

Q. Did you not put a twenty-dollar bill, which he gave you, in an envelope, directed to Captain
5140 Deloncle? A. No, sir.

Q. Didn't you tell him then that the money would go to the first steward, who would give it to Mrs. Deslions? A. No, sir; that is not a matter of the captain.

Q. I ask you now if you didn't say that it should go to the first steward? A. No, sir, when we get money to give to a passenger it is always to the purser that the money is given.

Q. Well, the purser wasn't there on the dock at that time? A. I don't know.

Q. Didn't you know the purser? A. At that 5141
time, yes.

Q. Was he there, where you saw him, at that time? A. I don't know if the purser was on the dock or on board.

Q. Didn't you direct that twenty dollars to be given to the purser to be given to Mr. Deslions' wife? A. No, sir.

Q. You have said that if Mr. Deslions was not a passenger he couldn't send any baggage on the steamer? A. Yes.

Q. You repeat that, do you? A. Yes.

Q. Well, he wasn't a passenger on the steamer, was he? A. I don't think so. 5142

Q. You know he wasn't, don't you; didn't you see him after the loss of the *Bourgogne?* A. Yes.

Q. You know he was not a passenger? A. Yes, I am sure he was not a passenger.

Q. Did the Company at that time have a rate of charges for freight which was printed? A. I don't remember about that; I was not freight agent; I was acting agent, and I don't know if the freight agent had a price printed.

Q. Do you know anything about the rates of freight? A. The prices are very changeable.

Q. Do you know anything about the rates of freight at that time? A. I know the rates of value, 5143
but for other articles the rates change.

Q. But you don't know, as I understand you, what the rates of freight were at that time? A. We have many rates.

Q. Do you know anything about rates of freight? A. The freight of value.

Q. What do you mean by "value"? A. *Valeur;* for gold, diamonds, or something like that.

Q. You know what the rate of freight is for them? A. Yes.

Q. How do you come to know that and not know

5144 any other? A. Because that freight rate don't change.

Q. Is that printed? A. I don't know; I never saw that printed.

Q. You never saw a printed list? A. Perhaps it is, but I never saw it.

Q. Do you remember that you have ever seen a printed list of the charges for freight? A. No, I don't remember.

Q. Look at this book which has been produced. You see that something has been removed from that column, do you not (p. 39)? A. Yes.

Q. Also here, has it not (the opposite page)? A.
5145 I don't know what it is there.

Q. There has been something taken off there, hasn't there? A. Perhaps the stamps.

Q. I turn to page 38; hasn't there also been something taken off on both of those pages?

Mr. Kopf objects. Objection overruled. Exception.

Mr. Haldane: The book shows on numerous pages that stamps have been removed.

Q. Now look at that stamp. That is the dock stamp, it it not? A. Yes.

Q. And that has been put on there, has it not,
5146 since those stamps were taken off on page 38? A. I don't know.

Q. Don't you see that that stamp covers that blue mark so that the stamp has been put there? A. Perhaps stamps have been removed before that page was written.

Q. Before that stamp was put on? A. I don't know; I can't tell.

Q. What is the name of this book that you have produced? A. It is the dock book; *entrepont*.

Q. It covers what time? A. From the 5th of February, 1898, to the 18th of February, 1899.

Q. For that whole year? A. Yes.

Q. I see a paper on the first of it; what paper is 5147
that? A. I don't know.

Q. Do you know whose handwriting that is? A. It is a note, the number of the ticket of Mrs. Faivre and the price paid by her.

Q. You mean of "Matile Faivre;" you don't know whether it is "Mrs." or "Miss," do you? A. No.

Mr. Kopf: I object to referring to that paper, it is a private memorandum of counsel.

Q. In the ordinary course of business, if the baggage was transferred from Basle to Havre to be delivered at Havre would not that transfer be entered on some book of the Company? A. I don't 5148
know.

Q. My question is, did not the regulations of the business of the Company require that that change should be entered in some book? A. I don't know the manner of proceedings of the baggage master on the dock; I can't know all the details of service.

Q. Do you say that you, being the general agent of the Company, don't know whether such a change as that would be entered in the ordinary course of business in some book of the Company? A. I can't tell that.

Q. On this Exhibit 5, which was put in evidence yesterday, you see the stamp in a parallelogram in 5149
blue? A. Yes.

Q. The first word there in it is in capital letters "RAPT"; do you know what that means? A. No, sir.

Q. Then the last word in that line is "Voy," is it not? What does that mean? A. I suppose that it is voyage.

Q. What are the written figures between the two stamped words? A. I don't know what it is for.

Q. Isn't it "41 B I S "? A. I think so, yes.

Q. The line below begins "Hon" in capitals; what does that mean, if you know? A. I don't know; I

5150 think it is "Honored" for thirty-six dollars. (It is followed by the number 36.)

Q. You are going to sail to-morrow? A. If possible, yes.

Q. Is it possible you may not go? A. I must go by the *Lorraine*.

Q. Does she sail to-morrow? A. Perhaps the day after to-morrow.

Q. How would the men on the steamship know that these packages were to be left at Havre? A. Because the baggage master put a counter mark for Havre; the baggage master puts on each trunk a counter mark, a certificate, to Havre.

5151 Q. Then the counter mark contains not only the number but also the destination of the goods, does it not? A. I think so.

Q. Well, don't you know? A. I don't remember exactly; but I think so; I can't be sure, but I think so.

Q. Do you know what would be necessary for any one to have in order to get those goods at Havre? A. To present the same counter mark that was given to the passenger, and on the rear of the counter mark that is given to the passenger would be the number of pieces of baggage, eight pieces or ten or one, or whatever it is, and it is, and with that

5152 check the passenger at Havre will claim his baggage.

Q. Was that done in this case? A. I don't know; I can't tell you that.

Q. You say that this would be done; would not also an entry be kept on this side of the water, in New York? A. I can't tell you that.

Q. Who would know about that, if you didn't know? A. The baggage master.

REDIRECT-EXAMINATION BY MR. HALDANE:

Q. Did it make any difference whether Mr. Deslions was a passenger or not, so long as this bag-

gage belonged to some one that had a ticket; if he 5153
came there to pay the excess baggage for somebody else would that make any difference? A. When Mr. Deslions came on the dock and asked me to register his baggage to Havre and not to Basle I saw that he was a passenger; he had a ticket; anybody was has a ticket can register the baggage.

Q. And pay the excess? A. And pay the excess; every day that is done; any day people come and register baggage for other people. I can register your baggage if I wish to, if I have your tocket.

Q. It is not a common thing, for a passenger having a ticket for a certain place to have the ticket checked for another place, is it? A. Oh, yes, cer- 5154
tainly.

Q. Is it a common thing? A. It is not very common; but sometimes.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. Did you see the name of the passenger on this ticket? A. I saw the ticket; I didn't see the name.

Q. Do you mean to say that you didn't look at the ticket to see who the passenger was? You say you saw the ticket; didn't you take it in your hand? A. I don't remember about that.

Q. Didn't you take it in your hand to look at it and see whether the ticket was for Basle? A. No; 5155
Mr. Deslions showed me a ticket.

Q. And you saw it was for Basle, did you? A. Yes; probably.

Q. Then you probably saw what the name was also, did you not? A. Perhaps.

Q. You knew that "Matile" was not a man's name, did you not? A. If I saw "Matile" I would know that it was not a man; but I don't know if I saw the name..

Adjourned to Tuesday, February 10th, at 2 P. M.

5156 CHARLES W. POOL, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Haldane:

Q. Where do you live? A. 133 West Washington Place.

Q. What is your business? A. I am working for the Marshal for twelve years.

Q. Were you working for the City Marshal of the Third Municipal District in 1898? A. I was; for Mr. William Maas.

Q. Did you have anything to do with levying an execution on or about the 23d of June, 1898, at the
5157 house of one George Deslions, in the suit of Marquet *vs.* Deslions?

Objected to as immaterial and incompetent. Objection overruled. Mr. Benedict excepts.

A. I was there in charge of the place.

Q. Where? A. In South Washington Square.

Q. What number was it, do you know? A. I can't exactly think what number it was then; but it is No. 73 now; the same building.

Q. What was there in the place when you went in to assist in the levy? A. I was taken up with Mr. Maas and told to go upstairs with him, and
5158 there was quite a lot of stuff sitting on one side, and I didn't stay up there, but about five or ten minutes, and went downstairs, as he ordered me to stay there and see that nothing went away from that place.

Q. What was there to take away? A. It was supposed to be a lot of Indian goods.

Q. Did you see the defendant, was he there? A. Yes, sir, the Indian man was there with his wife and a little child, on the top floor.

Q. How long did you remain in possession? A. Three days and nights.

Q. Then what did you do? A. I was called away, 5159
and said everything was right.

Q. Who called you away? A. The Marshal.

Q. During the three days that you were in possession was Deslions, and were his wife and child there? A. He was; I have seen him; I used to see him going out in the evening, and come back at a late hour at night.

Q. Did you ever speak to him? A. No, sir, I did not.

Q. Did he speak to you? A. No, sir.

Q. Was Mr. Maas there at any time while you were there? A. When we went upstairs together, and this gentleman, sitting here (indicating Mr. 5160
Henry Marquet) was there.

Q. Did you see the Marshal in conversation with anybody else besides Mr. Deslions? A. They were talking together, and they told me to step one side, and I did; and what the conversation was I do not know.

Q. Did you see anybody serve any paper or exhibit any paper to the marshal at that time? A. No, sir, I did not.

Q. Do you know why you ceased to remain in possession?

Objected to on the ground that the witness has stated that the Marshal told him to leave. 5161

Objection sustained.

Q. Do you know?

Objected to. Objection sustained.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Do you remember anything about the dates when you went there? A. Well, I can' exactly tell you what day of the month I went there for Mr. Maas.

5162 Q. Can you tell what day it was that you left? A. Oh, I think—no, I can't exactly put that in my memory; there are so many places I am sent to.

Q. Did you stay there day and night? A. Yes, sir, three days and three nights.

By Mr. Haldane:

Q. Where is Mr. Maas? A. He is dead and buried.

HENRY MARQUET, being duly sworn and examined as a witness for the petitioner, testifies:

5163 By Mr. Haldane:

Q. Where do you live? A. 122 Waverley Place.

Q. What is your business? A. Drug business.

Q. Where? A. 142 Bleecker street.

Q. Do you know George Deslions? A. I do.

Q. Do you know where he lived in June, 1898? A. Yes, sir.

Q. Where? A. 73 South Washington Square; the place that we had leased from the Eno Estate.

Q. How long did he live there, do you know? A. To to the best of my knowledge I should say about seven or eight months.

5164 Q. Did you rent his apartment to him? A. Yes, sir.

Q. How many floors did he occupy there? A. The top floor.

Q. Only one floor? A. Yes, sir.

Q. How much rent did he pay? A. $30 or $35; I am not sure.

Q. How many rooms were there in the apartment? A. Five rooms.

Q. How wide was the apartment in front, do you know? What is the frontage of the property? A. 25 feet front; not quite 25.

Q. Was it a double or single apartment? A. 5165
Single.

Q. Do you know when he left there?

Mr. Benedict objects to all this line of examination. Objection overruled. Exception.

A. He left on the 27th or 28th of June, 1898.

Q. Do you know of his being sued by Louis Marquet for the rent of that flat? A. Oh, yes.

Q. That is your father? A. Yes.

Q. Did you have anything to do with trying to levy an execution to collect a judgment in that case? A. I did.

Q. Did you go with the Marshal to the property? 5166
A. I did.

Q. What was there to levy on? A. A few Indian curios that he had there.

Q. How many trunks or cases were there in the apartment? A. None at all.

Q. Has that judgment ever been paid, that you know of? A. No.

Q. What happened when you tried to levy on the property in that apartment.

Same objection, ruling and exception.

A. When we went there with the Marshal we were confronted by a bill of sale.

Q. Who produced it? A. A gentleman there that 5167
was along with Mr. Deslions, standing in between Mr. and Mrs. Deslions at the time.

Q. Did Mr. Deslions say anything about it? A. He said he didn't own these articles at all; they weren't his.

Q. Did you see the paper? A. I did.

Q. Do you remember who was the name of the party to whom the bill of sale was made out? A. No, that would be hard for me to say; I couldn't say.

5168 Q. What did Deslions say the paper was? A. A bill of sale; he told the Marshal.

Q. What did you do then? A. The Marshal said if I wanted to go on I would have to furnish a bond; and I think he told me something like a two or three hundred-dollar bond; we left that morning and put this man here in charge, Pool, and told him to stay there and see that nothing was taken away; in the meantime I went back and consulted with my father.

Q. What did you finally do about it? A. I was very much in doubt about it.

5169 By Mr. Benedict:

Q. What did you do? A. I went there the 27th again, and tried a second time.

By Mr. Haldane:

Q. And then what happened? A. The same thing happened.

Q. Was Deslions there at the time you attempted to levy the second execution? A. Yes, sir.

Q. What did he say then? A. "I told you before, I have nohing to do with it; it is not my stuff."

Q. Was the bill of sale produced at the time the
5170 second execution was to be levied? A. No, sir, not at that time.

Q. What did you finally do, did you levy or did you release? A. I didn't think it was worth while to furnish a 200-dollar bond to levy on what was there.

Q. Well, you released the levy did you? A. Yes, sir.

Q. Did Mr. Deslions occupy any part of the house except the top floor? A. None at all.

sentation of the ticket, and registered for the dif- 5195
ferent destinations called for by the railroad on the steamship ticket. The passenger receives a label bearing a number, and a corresponding, *fac simile* label is pasted on every one of the pieces of baggage registered under that number.

Q. What is that paper called that is handed to the passenger? A. The "ticket baggage" we call it in French.

Q. Did you ever hear it called a counter mark? A. Never; and the baggage is weighed and allowance made to the passenger for the amount he is entitled to, according to his or their class, and the supplement paid, if there is any supplement, and 5196
the baggage is run into the steamer immediately after being checked by the passenger.

Q. Do you remember what color those tickets were in use in 198? A. I think they varied according to the class; I think they were yellow according to the third class; that is my recollection of it; but we vary them sometimes to change our series, but have different labels for different classes.

Q. It is in evidence here that the total amount of baggage accompanying the passenger in this case was 952 kilos. How much is that in American weight? A. I suppose nearly 2,000 pounds; practically; we will say 2,000 pounds roughly. 5197

Q. Is that an unusual amount of baggage to go with a passenger?

Objected to.

A. No.

Q. Do you know of a passenger taking as much baggage as that with him? A. Oh, frequently; my attention is called to it often; particularly when there is an amount.

Q. Explain, if you think there is any explanation needed, how it is that large quantities, weighing so

5198 much as that, go as personal baggage; give any instances that come under your own observation? A. I have had two or three parties approach me on the dock the morning of sailing, with a truck-load of furniture for their house, trunks, etc., and say they wish to take it as baggage, as they wish to pass it, themselves, through the Customs, personally, on arrival at Havre, they wish it to accompany them; and as I know the amount of space left in the ship, I judge whether we can take it as baggage. If it is possible we let them take it along and weigh it, and they pay the extra baggage, and we give them a receipt for it.

5199 Q. Suppose a passenger should arrive on the morning of sailing with such a lot of stuff, and want to ship it as freight? Could he? A. Impossible.

Q. Why? A. Nothing is taken as freight on the morning of sailing. The formalities in France necessitate that a manifest with a bill of lading attached accompany the ship, bearing the merchandise, and these manifests are made the night preceding the sailing, and the ship is cleared the afternoon before with the clearance covering the freight that is to go in the ship. After this manifest is once closed nothing more is permitted to go into the ship, even though she is half empty and there is mer-

5200 chandise alongside; it will not go.

Q. Supposing it were possible to get any freight on board the *Bourgogne* on the morning of July 2d, 1898, who would have to be applied to to get it done? A. Only myself; without my authority no freight, not a package, could be put in the ship.

Q. I believe you said you were on the dock on the morning the boat sailed? A. I was.

Q. Was the purser on the dock? A. He was on and off the dock, going to and from the ship; he comes from his room down the gangway and he

walks along the dock and sees to his stewards, and 5201
such things.

Q. Up to how short a time before the boat starts? A. I think he was within five minutes of sailing; he came up as I went off.

Q. Was the captain down on the dock? A. The captain was down on the dock, on the edge of the gangway, towards the No. 2 hatch where they were loading baggage; he was walking up and down along there.

Q. Was there anything to prevent Mr. Deslions from going on board the boat to see his wife, up to the moment of sailing? A. Any one is permitted on board the ship the day of sailing. 5202

CROSS-EXAMINED BY MR. BENEDICT:

Q. You say you think the purser came up on board the ship as you came down? A. No.

Q. That was what you said? A. He asked me up to the last——

Q. You said the purser came up as you went down. How long had you been on the ship then? A. I had been on and off the ship for, I should say, forty-five minutes, up and down the gangway, to the purser's and captain's room, and walked down the gangway and back again, and as I understood I was asked how late up to the moment of sailing I 5203
saw him, I said I saw the purser coming up as I came off, and I came off at the last minute.

Q. So I understood. As you came down off the ship how long had you been on the ship that time? A. As I say, I had been on and off for the last forty-five minutes.

Q. I didn't ask how long you had been off; I asked how long you had been on? A. From the time preceding when I came down? Not over five minutes, because I only went to the purser's room.

Q. Why did you go to him? A. To speak about

5204 a passenger and recommending him to take good care of him, and I also spoke to the steward for fifteen or twenty minutes.

Q. Did you speak to the purser in his room about the passenger? A. Yes.

Q. And yet you met him coming down? A. That was the reason I went to his room; I went down there and stood waiting to give the signal of departure, till the purser came on the ship again; that was what called me on the ship five minutes before the sailing.

Q. Who was the agent at this time of the line, here in New York? A. The general agent was Mr.
5205 de Bocandet.

Q. But he wasn't here in New York at that time? A. You asked me the agent.

Q. I asked you who was the general agent in New York at the time? A. There was no general agent; there was an assistant agent.

Q. He had general charge in place of Mr. de Bocandet, and had all his authority? A. He did.

Q. And that was who? A. Mr. Paul Faguet.

Q. And he was on the dock? A. Yes, sir.

Q. Do you remember, have you any personal memory, of seeing any of these packages that Mr. Deslions has testified to? A. No, not those par-
5206 ticular packages.

Q. I am not interested in any others. You have no memory of seeing them? A. No; I saw all the baggage.

Q. You have no memory of having anything to do with it in any way? A. Mr. Deslions' baggage? No.

Q. Have you any memory of having anything to do with those particular packages? A. No.

Q. Do you remember seeing those particular packages? A. They were not called to my attention as Mr. Deslions' baggage. I may have seen them, as I stood by the passengers' gangway and

saw that they were loading the passengers' bag- 5207
gage; I saw thousands of trunks.

Q. Have you any memory of seeing these particular eight trunks, or any of them? A. Not those particular trunks; my attention wasn't called to any particular trunks.

Q. I understood you to say that you had been applied to by people who have brought a cart load of furniture, etc., to have it shipped as baggage? A. Yes, sir.

Q. Was that in your department? A. When I am assistant agent, yes, sir; during the absence of Mr. de Bocandet.

Q. But excuse me; you were not assistant agent 5208
at that time? A. No, sir, not in 1898.

Q. Had you ever been applied to before? A. Certainly. If you will allow me to explain the thing clearly——

Q. You answer my questions; that will be explanation enough. My question is whether you had ever been applied to by parties on the dock who had brought, as you say, a cart load of furniture, etc., with reference to shipping it as baggage? A. I have been applied to as assistant agent or acting agent during the years that I have acted in that capacity.

Q. And at that time there was a man in charge 5209
of the baggage, was there not? A. I was not applied to at that time.

Q. So far as you were applied to. A. I have never been applied to when there is an acting agent; but when I am acting agent and when I am assistant agent——

Q. I understand you to say that you have been at certain times applied to on the dock by people who wished to have a cart load of furniture, etc., shipped as baggage? A. When I have been acting agent and assistant agent.

5210 Q. At that time there was on the dock, was there not, a man who had charge of the baggage? A. There was; there always is.

Q. Well, there was then; whatever this application was made to you? A. Certainly; a baggage-master you mean?

Q. Yes. A. Oh, yes.

Q. And yet the application was made to you? A. It has to be referred to me when it is an excessive amount.

Q. To you? A. Or to the acting agent or the assistant agent; the baggage-master has no authority to take an extra amount of baggage.

5211 Q. Not any extra baggage? A. Not an abnormal quantity.

Q. What is an abnormal quantity? A. A cartload of half a cartload he would not take without consulting some superior officer.

Q. Will you specify any particular weight that he would have to apply to somebody? A. The weight wouldn't be known to him; he would judge by the volume.

Q. Doesn't he weigh it? A. Not until he has authority to take it; it is the question of the volume that he would object to first; a man might bring a small safe weighing 10,000 pounds and the bag-

5212 gage-master would not refer that to the agent or the party in authority until he got it on the scales; but if he saw a trunk-load that might only weigh 300 pounds he would not take it without referring to some authority, because we are cramped for space; it is space that bothers us.

Q. He would refer half a cartload to some superior? A. Especially in the crowded season, because we are short of freight and baggage room; in the winter he might not.

Q. Do you know what were the rates of freight for the voyage of the *Bourgogne*? A. Practically

BLURRED

on everything; any article you name I can tell you 5213
what the prevailing rates of freight were at that time.

Q. What would be the rate of freight for a trunk? A. Where to?

Q. To Havre? A. We wouldn't check a trunk for less than 5¼ at the minimum; a quantity of trunks we would take at so much a foot.

Q. How much a foot? A. Twenty-five cents a foot, as merchandise.

Q. That is a cubic foot? A. That is a cubic foot, and five per cent. primage, with a minimum of 5.25 allowing twenty cubic feet to a bill of lading; that is, no bill of lading would be signed for less than 5214
twenty cubic feet. We have to have a minimum rate.

Q. Was it your habit to sign bills of lading? A. No, my assistant signs the bills of lading.

Q. At that time, in July, 1898, who was your assistant? A. Mr. Dunn. I should like to state that as a rule I sign for the specie and valuables; for ordinary merchandise Mr. Dunn signs.

Q. Was this exhibit which you have testified about used at the time, in July, 1898? A. That was the form in use at that time.

Q. I am not asking about the form; I am asking about this paper? A. Yes, that was a valid docu- 5215
ment in July, 1898.

Q. It was used at that time? A. It was used, yes, sir.

Q. Did you produce it to the counsel on the other side? A. Why certainly; what do you mean?

Q. Did you give it to him? A. Why certainly.

Q. Have you had it in your possession since July, 1898? A. I have; it was part of my file, my records of the shipments made, to my Company for merchandise on the *Touraine*.

OPY

5216 Q. Did all the bills of lading of the Company contain this clause which I read from this paper:

"Clause 11: Also that the freight prepaid will not be returned; goods lost or not lost?"

A. Yes.

Q. They all did contain that? A. They all did contain that.

Q. How long had that clause been in the bills of lading at that time? A. As far as I can remember.

Q. You were examined once before in reference to this matter? A. I was.

5217 Q. When you said then that you couldn't tell whether that clause had been in the bill of lading for the last ten years have you refreshed your memory since then? A. You questioned me on a bill of lading from Havre to New York; not from New York to Havre; a French bill of lading as I remember.

Q. My question was put to you then how long this particular clause which I have read had been in the bill of lading of the Company, and you said you couldn't tell, and you couldn't say whether it had been there for the last ten years. My question now is: Have you refreshed your memory since then?

5218

Objected to, because the answer of the witness shows he wasn't being examined about the same sort of a document at all.

A. Absolutely; it was a different document, in French, from the Company on the other side.

Q. Then you were not shown an American bill of lading in that previous examination? A. No, not as I remember; the question did not come up in regard to an American bill of lading, in regard to

that clause; and I have no recollection of my own beyond ten years. 5219

Q. You don't remember this clause:

"Q. Will you read the English clause,"

and that you read:

"A. Also the freight prepaid will not be returned; goods lost or not lost."

You don't remember that? A. That was a translation of the French clause as I remember it.

Q. Well, you don't remember what I have read? A. What do you mean?

Q. I put this question:

"Q. Will you read the English clause," 5220

and you read:

"A. Also the freight prepaid will not be returned; goods lost or not lost."

Do you remember that occurrence? A. Certainly I do.

Q. And then you said that you did not know whether that clause had been in the bill of lading for ten years; I ask you if you have refreshed your memory? A. I have not; that was referred to in the French bill of lading; I said that I did not see these bills of lading inward, except when they came with questions of claims or lawsuits; but the outward bill of lading I get them up myself. As I explained, I was on the Committee of the Trans-atlantic Conference to arrange for a universal bill of lading, and I have absolute knowledge of every word, almost, in this bill of lading for the last twenty-five years. 5221

Q. There is no doubt about it now that the bills of lading of the Company at New York have contained that clause for a long while? A. Yes; there is no doubt whatever about that.

Q. I asked you whether you had seen both the

5222 bills of lading that were issued here, and elsewhere, and didn't you say you had? A. Yes.

Q. And didn't I put into your hands a paper and ask whether it was the usual form of the bill of lading from this port? A. I told you that because there were several of those forms.

Q. So that it was one of the forms that was issued here that you had before you then. Who did you say was the superintendent who had charge of the baggage? A. No superintendent had charge of the baggage. No superintendent; baggage clerks.

Q. Who had charge of the baggage? A. I can't remember their names; they change; there were
5223 two or three; three or four.

Q. Can you give me the names of any who had charge on the dock of the baggage department at that time? A. No, I can't remember; they change so often; we don't keep them.

Q. You spoke of Mr. Japhet as being superintendent of the dock? A. Superintendent of the wharf.

Q. Did he have charge of the baggage-master? A. He had charge of all the employees on the dock.

Q. (Repeated.) Did he have charge of the baggage-master? A. He has charge of the baggage and the freight, and everything relating to the handling
5224 of the ship.

Q. Superior to you? A. Not at all.

Q. Are you superior to him? A. As regards the freight; that is, as to what frieght he shall put in the steamer; as far as what freight he shall receive and what freight he shall put in the ship; but the question of loading it into the ship he has charge of to dispose of as he pleases, with the proper officer for the proper stability of the ship, to dispose of the cargo that I give him to put in the steamers, and to reserve such room as I tell him we shall have baggage for.

Q. Do you remember whether Mr. Japhet was on 5225
the dock that morning? A. Oh, I do, perfectly; certainly he was there; I know he was there.

Q. You had no knowledge personally, as I understand it, of anything that was done or said with reference to these particular eight trunks on that morning? A. Absolutely not.

REDIRECT-EXAMINATION BY MR. HALDANE:

Q. I omitted to ask the witness a question or two. What would be the freight charges on freight received and declared to be worth a hundred thousand dollars from New York to Havre? A. One-half per cent. 52.6

Q. One-half of one per cent.? A. On the value declared; according to that tariff which was issued by me at that time.

Q. From New York? A. One-half per cent. to Havre and three-quarters to Paris on the value declared; if anybody declared a valuation they must pay on that valuation.

Q. What about baggage; with personal baggage of one hundred thousand dollars what happens? A. We wouldn't accept it under a valuation.

Q. What would be done?

Objected to.

5227

A. We would tell them to ship it as freight; declare the value and pay our freight on the value.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. Do you mean to say that the rates of one-half per cent. apply to anything else except the items stated in this paper that you produced, Exhibit C? A. Yes; valuables of all kinds; pictures and paintings.

5228 Q. Anything that isn't stated; those are stated. Show me the words. A. That isn't necessary.

Q. There are no words in here that apply to anything else in general; they are not specified here? A. Not always; sea shells, valuable ostrich eggs, and a thousand things that come up; pearl shells, anything that the shipper's clearance shows in a valuation of articles of shipper's bill of lading; if the shipper's bill of lading declares a valuation superior to the amount that we are liable for, according to the clause in the bill of lading, on value not declared, invariably one-half per cent. freight is applied and
5229 collected prior to the signing of the bill of lading.

Q. Is there any such written regulation of the Company? A. No written regulation, any more than there is on any other rates.

Q. Here is a written regulation? A. I got that up for my own use.

Q. This is a regulation of the Company? A. The Company endorsed everything I did then; it isn't a regular thing.

Mr. Benedict moves to strike it out if is not a regular thing.

The Witness: It is a tariff.

Mr. Haldane: The witness is not competent to
5230 state what that is.

The Witness: A tariff you can't call a regulation.

Q. Have there been any rules laid down by the Company in reference to freight on valuables, except this written paper? A. Oh, yes, we have had correspondence on it.

Q. If there is any written rule I want it; but if there isn't, I don't care? A. I don't know of any rules or regulations written by the Company.

Q. You have never received any written regulations? A. No; a rate of freight is not a regulation.

Q. As far as you know there never has been any 5231
regulation made or adopted by the Company with reference to freight on valuables, except this paper, has there? A. I beg your pardon; that paper is the result of correspondence.

Q. Will you answer my question? A. I have answered your question; there is correspondence on the question of values.

Q. (Repeated.) As far as you know there never has been any regulation made or adopted by the Company with reference to freight on valuables, except this paper, has there?

Objected to unless counsel states what he means by "regulation." 5232

Mr. Benedict: I mean a regulation of the Company of any kind; if there has been, I want it.

Objected to unless counsel informs the witness whether he means a printed regulation.

Mr. Benedict: I understand regulations to be printed rules of the Company issued in a book form for the use of the officers.

The Commissioner: With that understanding the witness may answer the question.

A. Well, no; there is none to my knowledge.

Q. And never has been, to your knowledge? A. 5233
And never has been, to my knowledge; I wouldn't see it anyhow, because I make what rates I please; they trust me with that, to control the market.

Q. You said that this paper, Exhibit C, was issued by you, did you not? A. It was compiled by me; is that what you mean?

Q. I understood you to say that you got it up and issued it? A. I got it up and submitted it to the Company, and it was approved and issued.

Q. Issued by Mr. Forget? A. Oh, we always put the agent's name, whoever he may be.

5234 RENE JAPHET, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Haldane:

Q. Are you in the employ of the Company? A. Yes, sir.

Q. How long have you been in their employ? A. For twenty years.

Q. Where? A. I was on the ships, and since six years in New York.

Q. What is your present position with the Company? A. I am superintendent of the dock.

Q. How long have you held that position? A.
5235 Six years.

Q. Do you remember the occasion of the sailing of *La Bourgogne* on her last voyage? A. I do.

Q. What time of day did she sail? A. I should say it was ten or eleven o'clock.

Q. Were you on the dock that morning? A. Yes, sir.

Q. Did you see any other of the officers or agents of the Company or the ship, on the dock that morning? A. I saw everybody on the dock; the captain, purser and agent.

Q. Who was the general agent at that time? A. Mr. Paul Faguet.

5236 Q. The general agent? A. He was acting general agent.

Q. Who was the general agent? A. Mr. de Bocandet.

Q. Where was he at that time? A. I think he was in Paris.

Q. Who represented him? A. Mr. Paul Faguet.

Q. Did you see Mr. Faguet on the dock that morning? A. Yes, sir.

Q. Did you see Mr. Oscar Cauchois on the dock that morning? A. Yes, sir.

Q. Do you know the position he held with the

Company at that time? A. He was chief of the 5237
commercial service; what we call in French "Service commerciale."

Q. Which department? A. The freight department.

Q. Will you explain just what your duties were with reference to disposing of packages or trunks or cases that were brought to the dock that morning for shipment? Tell what you would do with eight trunks or cases, for instance, that were on the dock that morning, the morning of the sailing; what disposition would you make of them? A. I would go to the agent and apply to him, and ask him how he wanted them to be taken. 5238

Q. Do you remember whether Mr. Faguet spoke to you that morning about any person having any extra baggage? A. No.

Q. Who had the actual handling of the trunks, the personal baggage of the passengers, that was on the dock that morning? A. What do you mean by handling?

Q. Who weighed it or measured it? A. The baggage-master.

Q. Who was the baggage-master? A. I couldn't say exactly; I think he was a man named Fizet.

Q. Do you have charge of the disposition of the freight that is on the dock, as well as the baggage? 5239
A. Yes, sir.

Q. Did you load any frieght on the *Bourgogne* on the morning of the second of July, 1898? A. No, sir.

Q. Were you asked to take any packages as freight that morning, by any person? A. No, sir.

Q. Did you attend to the shipping or the putting on board of the passengers' baggage that morning? A. Not especially.

Q. Who separated the articles or packages to be

5240 shipped so as to show whether they were freight or baggage? A. I did.

Q. Did you clear up all the freight the night before? A. I think we did; I am not sure whether we had some freight left on the dock.

Q. You know whether you received or put on board any freight on the morning of sailing? A. No, we didn't! we didn't put any freight on board in the morning.

Q. Did you see the purser on the dock that morning? A. I guess yes.

Q. Do you remember whether you saw him that morning or not? A. I don't remember especially.

5241 You see I see all the officers always on board before the ship leaves; I see the captain.

Q. What was the name of the captain of the *Bourgogne?* A. Deloncle.

Q. Did you see him personally? A. Yes.

Q. Do you remember whether you saw him on the dock that morning? A. I think the last time I saw him he was on the bridge; I went to bid him goodbye.

Q. Do you know whether he was down on the dock any time between nine o'clock and when the boat sailed? A. Yes, he was on the dock, yes, sir.

Q. Do you know George Deslions, the man that

5242 makes this claim? A. No, sir.

Q. You don't remember any person coming to you that morning to arrange for any extra baggage or freight? A. Not at all.

Q. Do you know whether the custom of the Company is to allow passengers or friends of the passengers to go on board the boat up to the time of sailing? A. Of course, the day of the departure of the ship, everybody is allowed to go on board.

CROSS-EXAMINED BY MR. BENEDICT: 5171

Q. Do you know what day it was that you say you went to that place? A. The first time? On the 23d of June, 1898.

Q. You went there with the Marshal? A. Yes, sir.

Q. Whereabouts did you go? A. To the third floor; 73 South Washington Square.

Q. Who did you see there? A. Mr. Deslions, Mrs. Deslions, and a little girl and a gentleman were there.

Q. Do you know who the gentleman was? A. I do not.

Q. Did you get his name? A. They told me his 5172
name, but I can't remember his name now.

Q. And this gentlemen produced this paper, you say? A. Yes, sir.

Q. Did you take it in your hand? A. The Marshal was attending to that.

Q. Did you take it in your hand? A. The Marshal was attending to that.

Q. Did you take it in your hand? A. No, sir, I did not.

Q. Had you ever seen Mr. Deslions before you went there that day? A. Oh, yes, sir, certainly; I collected the rents.

Q. You went there again on the 27th of June; 5173
who did you see there then? A. Mr. Deslions and Mrs. Deslions and the little girl.

Q. How large a little girl? A. She was about three or four years old; a little girl.

Q. Was there anybody else there that day? A. No, sir.

Q. Did you speak to Mr. Deslions that day? A. I did sir.

Q. What did you say? A. I said "I want to collect this judgment," and he said "I told you before, I don't own anything here at all;" he had

5174 robes on the floor and a few pipes on the walls and a few objects; that was the front room.

Q. Did you go into any other room? A. No, sir, I did not; I went in the front room.

Q. Was that the same room that you went in the first time that you went there? A. No, the first time we went in we went into the dining room.

Q. The first time that you went there did you go into any other room than the dining-room? A. Yes, sir, we had to walk through the bed room into the front room; we had the conversation in the front room.

Q. This is the first time that you speak of? A.
5175 Yes, sir.

Q. You say that when you went there there were no trunks in the place at all, as I understand you to say; was that what you said? A. I supposed you meant trunks that contained some of these objects.

Q. I am not speaking about the contents; I am asking about the trunks; I understand you to say that there were no cases there at all? A. I suppose there were trunks to keep some of their clothing in.

Q. Did you see any? A. No, I can't say I saw any.

Q. Did you see any trunks or cases there the second time you were there? A. No, sir, I did not.

5176 Q. Hadn't there been a controversy between Mr. Deslions and you or your father in reference to something that he thought ought to be done in the apartment?

Objected to as immaterial. Objection overruled. Exception.

A. No, sir.

Q. Were you the one that had charge of the dealings with Mr. Deslions, or did your father attend to it himself? A. Both my father and I.

Q. But you don't know of Mr. Deslions making 5177
a claim that there was something to be done in the apartment? A. Any claims that were to be made were always sent to me, whether regarding repairs or anything of that sort; I was to attend to that.

Q. Then you say you don't know that there was any claim made of anything that was to be done, which Mr. Deslions claimed ought to have been done? A. No, sir, there wasn't.

Q. You don't know of any such thing? A. No, sir.

By Mr. Haldane:

Q. Did you have any trouble before that collect- 5178
ing rent from Mr. Deslions? A. He was very slow pay.

Adjourned to Wednesday, February 4th, at 3 P. M.

NEW YORK, February 10, 1903.

Adjourned to February 17, 1903, at 2 P. M.

NEW YORK, February 17, 1903. 5179

Adjourned to February 19 at 11 A. M.

5180 NEW YORK, February 19, 1903.

Met pursuant to adjournment.

Present—The COMMISSIONER,
Mr. R. D. BENEDICT,
Mr. E. G. BENEDICT,
Mr. HALDANE.

OSCAR R. CAUCHOIS, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Haldane:

5181 Q. Are you conected with the Compagnie Generale Transatlantique? A. For over twenty-seven years, continuously.

Q. In what departments of the Company's business have you been engaged during those twenty-seven years? A. Freight, entirely.

Q. Where? A. At their various offices in New York.

Q. Always in New York? A. Always in New York.

Q. What position do you hold with the Company now? A. I am the assistant agent and general freight agent.

5182 Q. What position did you hold in June and July, 1898? A. General freight agent.

Q. Who was the general agent at that time? A. Mr. de Bocandet.

Q. Are you also in your capacity as assistant or acting general agent of the Company familiar with the customs or rules of the Company relating to the shipment or reception of baggage? A. Perfectly.

Q. You know about this claim that is being investigated now of George Deslions, for the loss of a number of trunks? A. Yes.

Q. Have you invesigated it? A. I have. 5183

Q. Do you know whether the Company received from George Deslions, for shipment on board the *Bourgogne* for the voyage commencing the second of July, 1898, any freight? Yes or no? A. I do.

Q. Did the Company receive from Deslions for shipment on that voyage any freight?

Objected to unless the witness states how he knows.

The Commissioner: If he knows from an examination of the books then he must so state; the question is allowed if the witness can state from his own personal knowledge. 5184

Mr. Haldane: I don't care for any answer with those instructions.

Q. Were you on the dock on the morning of the second of July, 1898? A. I was.

Q. Did you see all the freight and baggage that was loaded on the *Bourgogne* on the morning that she sailed? A. Not all.

Q. Who had charge of the loading of the ship? A. The superintendent, Mr. Japhet.

Q. Was he the superintendent of the dock? A. Yes.

Q. Do you know, from your personal observation of what was going on on the dock that morning, 5185 whether eight trunks or packing cases weighing nearly a thousand kilos were shipped as freight that morning, on the boat?

Objected to unless the witness states how he knows.

The Commissioner: The question is allowed, in the shape it is put in now.

Exception.

5186 A. No.

Q. What do you mean by that; you don't know, or you know there weren't? A. Do you mean as freight?

Q. Yes? A. I say no, there were not; from my personal knowledge they were not shipped, as freight.

Q. What is it necessary for a person to do in order to ship freight on one of your boats? A. Apply to me on the exchange or at the office, for permission to ship by a certain steamer; inquire the rate of freight and ask what formalities are to be filled out to permit the reception of that freight.

5187 Q. Was that the case in July, 1898? A. Ever since I have been with the Company.

Q. Was there at that time any person besides yourself who had authority to receive and ship goods, by freight, on the boat? A. All the freight that is shipped comes under my personal knowledge and supervision.

Q. I will read you the sixth paragraph of Mr. Deslions' claim in this case:

> "That on the second day of July, 1898, claimant shipped on board the petitioner's steamer, *La Bourgogne,* a quantity of personal propeerty worth upwards of $50,000,
> 5188 under an agreement with petitioner for a valuable consideration received, that the same would be safely transported on said steamship to Havre, France, and there delivered to claimant or his agents."

Was there any person at that time, besides yourself, who had the authority to make such an agreement as that? A. As to freight, no.

Q. When you do receive freight from a shipper what papers, if any, do you give the shipper in acknowledgment or receipt? A. After he fills the nec-

cessary Custom House clearance and the bills of 5189
lading showing the contents and the destination and value, he receives a shipping order, which bears the name of the ship, the date——

Q. I will interrupt you and show you a paper, and ask you if that is the form of shipping order to which you refer? A. That is the form in universal use.

Q. In July 1898? A. Absolutely.

Q. Could a shipper get his freight on board the boat without filling out one of those forms? A. It would not have been received on the dock; the trucks would remain outside until the shipping order was presented. There is a notation on the paper that 5190
no goods would be received without the order, and that order would not be issued except certain formalities were complied with by the agents.

The form is offered in evidence; received and marked Exhibit A of this date.

Q. The goods having been received by the Company as freight did you issue any bill of lading; was it your rule to give the shipper a bill of lading? A. At the presentation of that order to the dock he receives a receipt for his goods, showing marks, the nature of the merchandise, the date of reception, which receipt bears the notation to be presented at 5191
the Company's agency and exchanged for a bill of lading. When that receipt from the dock comes back to me a bill of lading is issued to the party in the usual form of the Company.

Q. I show you a paper apparently dated July 9, 1898, and ask you whether that is one of the forms of bills of lading that was used at the time the *Bourgogne* sailed on that voyage? A. That is the form that was in use on the *Bourgogne*, within one week of date of this bill of lading, at the time the *Bourgogne* sailed.

5192 Q. Was there any freight on board the *Bourgogne* on the 2d of July, 1898, for which bills of lading similar to this paper had not been issued? A. Oh, no; that is impossible.

The paper above referred to is offered in evidence; received and marked Exhibit B of this date.

Q. I show you another paper and ask you to tell the Commissioner what that is? A. That is the only printed freight tariff ever issued by the freight department in New York, and refers only to values; as those rates do not vary.

5193 Q. You have no printed tariff for ordinary shipments? A. For freight the rate changes every day, at my disposition, according to the capacity of my ship and the season of the year, and the quantity of freights that are offering, and I make the rates whatever I please; but the rates on specie and valuables remain unchanged.

The paper above referred to is offered in evidence.

Objected to as immaterial.

Received and marked Exhibit C of this date.

Q. Will you tell the Commissioner how it is with
5194 reference to baggage; what happens when baggage is received at the dock for shipment, what is the *modus operandi* for handling baggage?

Objected to on the ground that the witness is freight agent only.

The Witness: I am assistant agent and acting agent of the line.

Objection overruled. Exception.

A. Baggage is brought to the dock by the passengers, or sent by express, and is claimed on pre-

CROSS-EXAMINATION BY MR. BENEDICT: 5243

Q. Is this man Fizet in the employ of the Company? A. He is not in the Company any more.

Q. Do you know when he left the employ of the Company? A. I couldn't tell you exactly.

Q. Do you know anything about where he is now? A. No.

Q. You don't know whether he is in New York or not? A. I don't think he is in New York; but I don't know where he is.

Q. You say everybody is allowed on board the ship; up to what time? A. We ring the bell about ten minutes before the ship leaves, and everybody has to go off. 5244

Q. And after that they don't allow anybody to go on board? A. Oh, they aren't very strict.

Q. But the rule is that nobody is to be allowed on board after that? A. We haven't any very strict rule about that.

Q. Do you mean to say that they allow everybody to go on board? A. Oh, if three hundred people want to go on board the ship, or twenty want to go on board, they wouldn't let them.

Q. Or five? A. Well, that is different.

Q. It would depend on how much time there was left, wouldn't it? A. Well, I couldn't answer that exactly, because that is left very often to the em- 5245 ployees, and I am not all the time at the foot of the gangway.

Q. But do you give instructions to the man at the gangway when you are there? A. I do sometimes, yes.

Q. Don't you tell him "You musn't let anybody else on board?" A. May be I tell him, yes.

Q. You generally do, don't you? A. Not generally, no.

Q. Very often? A. Quite often.

5246 Q. You said that Captain Deloncle was on the dock that morning? A. Yes, sir.

Q. Are you sure you saw him? A. Yes, certainly I am sure.

Q. What makes you remember it; did you speak to him? A. Yes, sir, I spoke to him.

Q. What did you say? A. I spoke to him about the evening before; he was with me the day before he left.

Q. How long was that before the ship sailed? A. Oh, I couldn't remember.

Q. An hour? A. An hour, or three-quarters of an hour, or may be half an hour; I don't know; I
5247 couldn't be positive.

Q. Did you see him go on board? A. No, I don't remember if I saw him go on board.

Q. You say you think you saw him on the bridge? A. I am sure I did.

Q. How long before the vessel sailed did you see him on the bridge? A. Well, I think it was five or ten minutes before.

Q. Or fifteen? A. I don't know; five or ten minutes, because I usually go to bid goodbye to the captain at the last moment.

Q. Did you go on the bridge? A. I went on the bridge, yes, sir.

5248 Q. And that was shortly before the ship sailed? A. That was shortly before the ship sailed.

Q. But how long before you won't undertake to say? A. I should say ten minutes perhaps; I don't know.

Q. You have no memory about it specifically? A. No, I don't remember exactly.

Q. You had no knowledge, had you, at all, with reference to the trunks and packages that Mr. Deslions had there? A. Not at all.

Q. You had nothing to do with them? A. I should have to do something.

Q. Do you remember that you had anything to do with them? A. No, I had nothing to do with them. 5249

Adjourned to Wednesday, February 25, at two P. M.

NEW YORK, February 25, 1903.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT,
MR. HALDANE.

5250

Mr. Haldane offers in evidence the certified copies of papers referred to at the last hearing, it having been agreed that certified copies be substituted in place of the originals.

Mr. Benedict objects, on the ground that the pencil marks on the original papers are omitted in the copies.

Mr. Haldane lays the papers aside for the present.

JOSEPH KEPPLER, being duly sworn and examined as a witness for the petitioner, testifies:

5251

By Mr. Haldane:

Q. Your residence please. A. At the present time? 106 Richmond road, Stapleton, Staten sIland.

Q. Your occupation? A. Cartoonist.

Q. Connected with any periodical? A. Puck.

Q. Do you know one George Deslions? A. Yes.

Q. When did you first form his acquaintance? A. Approximately ten years ago.

Q. How did you come to get acquainted with

5252 him? A. Being a collector of Indian curios—I believe I happened to see a display that he had in a window, and I questioned him as to the price and value of his things.

Q. Where was this display? A. Fourth avenue, near Thirteenth street I believe.

Q. Were you interested in the collecting of Indian curios yourself? A. Yes.

Q. To what extent have you indulged in that undertaking? A. I have collected for some fifteen years.

Q. For your private collection? A. Yes, sir.

Q. Did you go into Mr. Deslions' place on Fourth
5253 avenue at that time? A. Yes, sir.

Q. What did he have in stock at that time?

Mr. Benedict: I submit that ten years ago is pretty far away.

The Commissioner: It is allowed.

A. Well, he had a collection of Indian accoutrements and implements of war and the chase; mainly western.

Q. Was there any advertisement or sign up at that time, advertising what his business was? A. I cannot recollect.

Q. Did you have any conversation with him as
5254 to what his business was? A. Yes, sir.

Q. What was that? A. I understood at the time that he was a dealer in curios.

Q. How large a place was this that he had there? A. The front room on the first or second floor.

Q. Have you been engaged in pricing or handling or inquiring about this class of goods, so that you know about what the value of such a collection as he had was at that time? A. Not officially; merely personally, for my own personal collection.

Q. During the time that you have been engaged in making up a collection for yourself what occa-

sion have you had to obtain the price of such arti- 5255
cles as Mr. Deslions handled? A. Merely the custom of purchasing these goods.

Q. Has that extended over the period of time that you have mentioned? A. Yes, sir, over fifteen years.

Q. What in your judgment was the value of the stock of goods that Mr. Deslions had at Fourth avenue at that time.

Objected to.

The Commissioner: The witness has shown no positive knowledge as to what was there at the time.

5256

Question withdrawn.

Q. Did you see the stock of goods that he had on hand at that time? A. Yes, sir.

Q. Did you look it over? A. Yes, sir.

Q. Now I ask you what, in your opinion, was the value of the stock of goods that he had on hand at that time of Indian curios?

Objected to as incompetent; no proper foundation laid, and immaterial.

The Commissioner: Objection sustained for the time, unless the witness can show some more particular knowledge as to what was there. 5257

Mr. Haldane: If you recollect, the same kind of testimony was admitted on the part of the witness White, for the claimant, who showed no acquaintance whatever with this class of goods.

The Commissioner: You are asking the witness to testify as to the value of what was in a certain place at a certain time, some time ago.

Question withdrawn.

Q. Can you particularize anything that you saw at that time? A. Very few things, and I wouldn't

5258 care to place any valuation upon the collection at that time, for the reason that it was too long ago. I remember some things that I purchased, but just what he had at that time I can't recall.

Q. Were there any trunks or cases around, receptacles for this stock; trunks or cases in which the goods could be packed? A. I can't recall.

Q. How were these goods exhibited or exposed? A. They were draped about the room; suspended from the wall.

Q. Did you see that there was a show case? A. There was a small show case donwstairs on the street, leading to the entrance of the building.

5259 Q. After the time that you have mentioned did you have occasion to find out what Mr. Deslions had on hand in the way of Indian curios for sale? A. Yes; I dealt with him subsequently.

Q. Covering what period? A. I guess up to within the last five years.

Q. Do you remember when the steamship *La Bourgogne* was lost? A. Yes.

Q. Do you know up to within what time of that catastrophe did you have occasion to deal with Mr. Deslions? A. Within six or nine months.

Q. At what other places besides this place on Fourth avenue did you see his collection? A. In a

5260 place in Fourteenth street; a place in Twenty-third street, and a place in Washington square.

Q. What was the place on Fourteenth street; a store or shop or private residence? A. It was an office building I believe, or studio building.

Q. How was the collection exhibited there? A. It was suspended from the wall; and thrown on sofas I believe, and couches.

Q. Did you see all that Mr. Deslions had at that time? A. I can't tell; I saw everything he claimed to have.

Q. Can you give us a general description of the

collection that you saw at Fourteenth street, as to 5261
its size and quality? A. I can mention some articles I saw there; but I can't recall just the size of the collection.

Q. What portion of the room did it occupy or take up? A. The walls.

Q. At Fourteenth street were there any trunks or packages containing part of the stock, or did Mr. Deslions say that part of the stock was in trunks or packages? A. Not that I remember.

Q. What were you looking over his collection for at Fourteenth street? A. In order to buy Indian curios.

Q. Did you buy anything of him? A. Yes, sir. 5262

Q. At Fourteenth street? A. Yes, sir.

Q. Do you remember what you bought? A. I bought a head dress.

Q. Do you remember what you paid him for it? A. $15.

Q. What sort of a head dress was it? A. A Sioux bonnet.

Q. Any particular description of bonnet? A. It was merely an eagle head dress; with some fifteen or twenty eagle feathers.

Q. Was it a war bonnet? A. Yes, sir.

Q. Did you buy any other articles of him at that time? A. Most likely.

Q. Do you remember what you bought? A. Not 5263
just now.

Q. The next place you saw this collection was on Twenty-third street, wasn't it? A. I believe so.

Q. Do you remember the number? A. No, sir; it was near Seventh avenue I believe.

Q. Between Sixth and Seventh or Seventh and Eighth? A. Near Seventh avenue.

Q. Was that a private house or a store, or what was it? An apartment, or what? A. I believe it was a private house.

2564 Q. Was there any exhibition outside, a show case or anything there? A. I can't recall.

Q. How large a room was the collection exhibited in? A. About 20 by 25.

Q. Were there any trunks or packages containing part of the collection there, or was the collection all exposed? A. It was exposed, to the best of my knowledge.

Q. Do you know whether what you saw there was claimed by Mr. Deslions to be his entire stock, or only part of it? A. I believe it was his entire stock.

Q. Did you purchase anything of him at Twenty-third street? A. Yes, sir.

5265 Q. Do you remember what? A. Yes; a few things.

Q. What were they? A. One was a back-rest, willow wands; then there was some bone crushers or mauls, and war clubs, scalps, and I remember these distinctly; the other articles I can't recall.

Q. Do you remember what you paid for the scalps, each? A. $8 for one and $10 for the other.

Q. What did you pay for the clubs, do you remember? A. No, sir, I can't remember what I paid for each one.

Q. From your experience in inquiring about the prices of such articles what was the value of those

5266 war clubs that he sold you?

Objected to as incompetent. Allowed.

A. From $2 to $4 apiece.

Q. Did Mr. Deslions, either at Fourteenth street or Twenty-third street, or at any other time during your acquaintance with him, tell you what his business was? A. I always understood him to be a dealer in Indian curiosities.

Q. Did he at any of these times show you any private collection that he had that was not for sale? A. Not that I remember.

Q. Did you visit his place at Twenty-third street 5267
more than once? A. Yes, sir.

Q. These purchases that you have mentioned, were they made at different times when you visited him? A. Yes, sir.

Q. And you have now mentioned all that you can remember? A. I recall another place where he transacted business; I believe it was Sixteenth street; Sixteenth or Seventeenth street.

Q. You visited him there, did you? A. Yes, sir.

Q. And he had about the same kind of collection there as at the other place? A. Yes; similar.

Q. Did you purchase any goods of him at Seventeenth street? A. I believe so. 5268

Q. Do you remember what you purchased? A. No, sir.

Q. Then the only other place that you remember seeing his collection was in Washington square? A. Yes, sir.

Q. Was the collection exhibited there in about the same way as at Twenty-third and Fourteenth streets? A. Yes, sir.

Q. Did you purchase any more goods from him at Washington square? A. Yes, sir.

Q. What did you purchase, that you remember? A. I remember having purchased a Buffalo robe there.

Q. What did you pay him for it? A. I can't re- 5269
call.

Q. Do you know what the value of Buffalo robes, such as you purchased, was at that time? A. This was an old one without hair; it was embroidered, and I paid somewhere from $6 to $8 for it.

Q. Was it damaged? A. No; merely the hair was eaten or worn off.

Q. If you can remember will you please now describe the way in which this collection was exhibited at his residence in Washington square? A.

5270 Well, it was hung, draped, from the walls and a few articles were thrown over chairs and the couch and table, and some objects were on the floor.

Q. Were there in the room at Washington square any trunks or packages or cases containing other articles, as far as you know? A. Not that I remember.

Q. Did Mr. Deslions show you any? A. I can't recall.

Q. Did Mr. Deslions at the time you were at Washington square state to you that he had any private collection that was not for sale, and that was not being exhibited? A. Well, as nearly as I
5271 can remember, he told me of one collection that he expected to get, that belonged to some gentleman.

Q. That was when he was in Washington square? A. Yes.

Q. What time of year was that, if you remember? A. I can't recall.

Q. Do you know approximately what the amount of your purchase was from Mr. Deslions, altogether? A. Extending over the period of my dealings with him?

Q. Yes. A. From $600 to $1,200.

Q. Do you know of any other collections during this period of the same class of goods? A. Yes, sir.

5272 Q. Can you give the names of any of the owners? A. Mr. Frost, of Howard street, had Indian curios for sale; Mr. Joste had some Indian curios; Mr. Root, of Barre, Massachusetts, offered me a collection; that is all I recall just at present.

Q. Have you seen all these collections that you have mentioned? A. Yes, sir.

Q. Including the one in Massachusetts? A. The one that was offered me for sale, of Mr. Root's, I saw; I haven't seen the entire collection of Mr. Joste; but I have seen a collection belonging to him.

Q. How did those collections which you have mentioned, which you saw, compare in size and quality with that of Mr. Deslions? A. They were approximately the same quality and class of goods, but the last collection of Mr. Deslions' was larger than either that I have seen. 5273

Q. Did Mr. Deslions' collection increase in size during the time that you had it under observation? A. It did towards the last.

Q. Did Mr. Deslions put any prices on any of the articles that he had there, which you did not buy, at either of these places? A. Yes, sir.

Q. Did he have any war shirts? A. Yes, sir.

Q. Do you remember what price he put on them? 5274
A. No, sir.

Q. Do you remember any articles that he had for sale, upon which he put a price; articles that you didn't purchase; let me see if I can refresh your memory. Did he put any price on any Indian teepees? A. Not that I remember.

Q. Any Buffalo war shirts? A. I bought a Buffalo shirt of him.

Q. What did you pay for it? A. $20; less or more; about $20.

Q. If you remember, did he put a price upon any moccasins or leggings; goods of that class? A. Moccasins ranged from—— 5275

Mr. Benedict: Tell what price he put on them, if you can say that.

A. (Continued.) It depends entirely upon the moccasins that he offered me for sale; there might be moccasins for a dollar and a half or two dollars and a half.

Mr. Benedict: Did he put any price on them is the question.

The Witness: Yes, he put prices on everything that he offered for sale.

5276 Q. Did you see his collection of Indian photos? A. I saw the collection of Indian photos, yes.

Q. Did he price any of those to you? A. I believe so.

Q. Do you remember what he asked for them? A. Ten cents apiece.

Q. Did he show you any collection of Indian medals? A. Yes, sir.

Q. Did he price those to you? A. He did, but I can't recall.

Q. Did he show you any Indian pipes? A. Yes, sir.

Q. Did he price any of those to you? A. Yes,
5277 sir, they varied all the way from $2 to $30.

Q. Did he state to you what the total value of his collection of pipes was; do you remember? A. No sir.

Q. Did he show you any masks? A. Yes, sir.

Q. Aztec, do you remember? A. No, sir.

Q. He didn't show you any Aztec masks? A. No, sir.

Q. What masks did he show you? A. Iroquois masks.

Q. What price did he put upon them? A. $15 apiece.

Q. Did he show you any Mexican suits made of
5278 buckskin? A. Not that I remember.

Q. Did he show you any Mexican silver spurs, engraved, or iron spurs engraved? A. I can't recall.

Q. Any saddles do you remember whether he showed you? A. He showed me an Indian saddle.

Q. Did he put a price upon it? A. Yes, sir.

Q. What was it? A. I believe it was $15.

Q. Did he show you any necklaces made of bear claws? A. Yes, sir.

Q. Did you price them? A. Yes, sir.

Q. What did he ask you for them? A. They 5279
ranged from $6 to $20.

Q. Did you price any of his stone tomahawks? A. No, sir.

Q. Any steel tomahawks? A. Yes.

Q. What did he ask for those? A. From $5 to $8.

Q. How many war bonnets did he have in his collection when you saw it? I don't mean to say exactly, but about how many? A. In the entire period that I have known him?

Q. At any one time. A. Three or four.

Q. What prices did he put on them? A. I can't recall.

Q. How many war shirts did he have on hand 5280
at any one time when you saw his collection? A. When I last saw his collection he had some six shirts.

Q. Did he put any price on them? A. I don't believe I asked for a price.

Q. How big a collection of scalps did he have at any time when you saw his collection? A. Two or three.

Q. At prices such as you have mentioned? A. I never knew his prices.

Q. You paid $8 for one and $10 for another? A. Yes.

Q. How many tobacco pouches did you see in his 5281
collection at any one time? A. About ten or fifteen.

Q. Do you remember what prices he put upon them? A. Well, pouches would average—I can't recall any particular price that he put on any one pouch; but they would average from $4 to $6.

Q. Do you remember seeing any Indian game bags in his collection? A. I don't know what that is.

Q. Did you see any squaw dresses in his collection? A. Yes, sir.

5282 Q. How many? A. Several; I can't recall how many.

Q. Did you price them? A. Yes, sir.

Q. What price did he put upon them? A. They would average from $20 to $30 or $40.

Q. Do you remember seeing any complete suits of Indian chiefs in this collection? A. Belonging to any one particular Indian?

Q. No; but Indian chief suits? A. Yes.

Q. How many, do you remember? A. Well, I can't recall any one complete suit belonging to one individual; but taking all these things together they might have belonged to one; but I don't be-
5283 lieve he claimed that they belonged to any one man.

Q. Did Mr. Deslions ever show you any one suit that claimed to be all the parts belonging to the same suit, and having any sort of history attached to it, or having any special value? A. No, sir, not that I remember.

Q. Did you see any scalping knives in this collection? A. Yes, sir.

Q. About how large was his collection of scalping knives, if you remember? A. At any one time?

Q. Yes, at any one time? A. Half a dozen.

Q. Did he put any price on them, and if so what? A. I can't remember.

5284 Q. How about his collection of Indian blankets; how large was that? A. I can't recall his having had a collection of Indian blankets; he had a few blankets.

Q. Did you price any of them? A. Yes, sir.

Q. What price did he ask for them, any of them? A. I can't recall; they seemed high to me at the time.

Q. Did you examine the blankets? A. Not very closely, no.

Q. Do you know by what tribe of Indians any of

them were made? A. Yes, I believe they were Na- 5285
vajo blankets.

Q. All of them? A. There may have been a Mexican serape among them.

Q. Did you see in his collection at any time any painted Buffalo skins? A. Not painted, but embroidered with porcupine quills.

Q. I am speaking of painted Buffalo skins? A. No, sir; painted calf skins.

Q. Do you remember any particular one of them as to which Mr. Deslions gave you any description or history? A. I have told you I can't remember any painted Buffalo skins; but he had painted calf skins. 5286

Q. Buffalo calf? A. No.

Q. Do you remember whether he had any collection of shell necklaces or earrings? A. He had a collection of wampum necklaces.

Q. About how many of those, do you know? A. Ten or fifteen strings.

Q. Did he put any price on them to you? A. Yes, sir.

Q. What? A. A dollar a string.

Q. Did you see any collection of Alaska spoons? A. Not that I remember.

Q. Did you see any Buffalo skins in his collection at any time, trimmed with deer hoofs? A. Yes, 5287
sir.

Q. How many? A. Several.

Q. Did you get the price of those? A. No, sir, I don't think I did.

CROSS-EXAMINED BY MR. BENEDICT:

Q. You said that you bought a head-dress; when was it that you bought that? A. I can't recall how many years ago; I believe I bought it at the Fourteenth store.

5288 Q. You said that that bonnet had some fifteen or twenty eagle feathers on it? A. Yes, sir.

Q. What kind of feathers, do you know, from what part of the bird? A. Some were tail feathers.

Q. How many? A. Fifteen or twenty.

Q. That is all of them. You said there were fifteen or twenty feathers? A. Yes, sir.

Q. And you say some were from the tail? A. Yes, sir.

Q. How many were those? A. I can't recall now; I have the bonnet at home.

Q. Where did the rest come from? A. I am not certain now.

5289 Q. Do you remember the color? A. Yes, sir.

Q. What color? A. They were white with a black tip.

Q. All the fifteen or twenty? A. I know some of them were.

Q. Can you give me an idea of the size of the feathers? A. About twelve or fifteen inches in length.

Q. Have you got that head-dress yet? A. Yes, sir—no, sir, I have not.

Q. How long since you have seen it? A. Six months.

Q. Have you any knowledge of the value of a
5290 good eagle feather, from the tail of the eagle, aside from this one purchase of your own? A. Yes, sir.

Q. How have you derived that knowledge? A. From prices that are asked for such feathers.

Q. What would you say was the price of one of these feathers that you saw on that head-dress? A. From seventy-five cents to a dollar.

Q. The value of feathers varies very much, does it not, with the size and condition of the feather? A. Yes.

Q. You spoke of buying a willow wand at Twenty-third street. A. A back-rest, yes.

Q. Do you remember what you paid for that? A. 5291
About $8.

Q. You said you bought some bone crushers; how many bone crushers did you buy? A. Some two or three.

Q. How many war clubs? A. Several; two or three.

Q. Were you at his place in Twenty-third street more than once? A. Yes, sir.

Q. Did you purchase on more than one occasion? A. I believe so.

Q. And these things that you saw in Twenty-third street were in a room, I understand you to say, about 20 to 25 feet square? A. Yes, approxi- 5292
mately.

Q. Of course. And the walls were hung with these things? A. Yes, sir.

Q. All the walls? A. They didn't entirely cover the walls; but the walls were draped with these things.

Q. All the walls were draped? A. As near as I can remember.

Q. You didn't buy out all the war clubs that he had, did you? A. No, sir.

Q. Nor all the bone crushers? A. I think not.

Q. Nor all the scalps? A. Are you asking me of any one purchase?

5293

Q. In Twenty-third street. That is what I am talking about now. A. I believe I bought all the scalps he had.

Q. You mean all that you saw? A. Yes, sir; I asked him what he had, and whatever he had he would show me; or at least he said he did.

Q. Did he say "I show you everything that I have got," or did he say 'Here is a scalp I show you"? A. He said "Here is a scalp." Still, he knew I would always buy scalps.

5294 Q. Did you ever buy any scalps from him except there on that occasion? A. From him?

Q. Yes; from him. A. I believe I bought some three scalps altogether.

Q. You said you bought three? A. Yes, sir, at Twenty-third street.

Q. Did you buy any anywhere else? A. Yes, sir.

Q. Where? A. I can't remember; it may have been in Twenty-third street, and possibly not.

Q. Are you positive that you ever bought three scalps of him? A. Yes, sir.

Q. What did you pay for the third? A. Just about the same; I paid $8 for one and $10 for the
5295 other, and for the third one about the same.

Q. I wish you would give us a description of these scalps? A. Two of them were very old; they were about alike; had both the epidermis and the epiderma, outer and inner scalp; and the third one wasn't quite as good as these two; I believe it was a woman's scalp.

Q. What was the size of these scalps? A. They would vary from an inch and a half to two and a half inches in diameter, or less; certainly not more.

Q. Could you tell from what part of the head they seemed to be taken? A. I suppose I could if I examined them closely.

5296 Q. Are you able to tell now? A. No, sir.

Q. Have you any memory when it was that you made these purchases in Twenty-third street? A. I can't recollect just now.

Q. You spoke of a place in Sixteenth or Seventeenth street; was that before the Twenty-third street place or after? A. I can't remember.

Q. Do you remember how long ago either of those places was visited by you? A. It must be six to eight years ago; I have a poor memory and never paid much attention.

Q. And you haven't any memorandum or any-

thing that will enable you to fix the times I sup- 5297
pose? A. I think I could, yes.

Q. You haven't done it, however? A. No, sir, I have not.

Q. You have spoken of seeing certain things that you did not buy. Can you tell us at which of these places where you saw these articles you saw these various things that you didn't buy? A. Yes, sir; in all the places.

Q. You didn't see all of them at all the places? A. You asked whether I had refused any of the articles offered me in any one of the places.

Q. Any one of the places. A. Yes, sir, I refused to buy articles that were offered to me at all the 5298
places.

Q. But of these places, for instance, that you have said that you saw steel tomahawks; can you tell where it was that you saw any bear claw necklaces? A. I saw—Mr. Deslions had bear claw necklaces most of the time, and I probably saw them at all the places.

Q. But you have spoken of pricing some; where and when? A. I can't answer that without consulting a memorandum.

Q. Can you describe any of these necklaces which you saw where the prices ranged from $6 to $20? A. Yes, sir, there were bear claws; either black bear 5299
strung on buckskin, or grizzly claws strung on buckskin; they were the more valuable.

Q. What was the difference between those where you say the price was $6 and those of the price of $20? A. The smaller bear claws were of lesser value and the grizzly were more valuable.

Q. That is all you can say as to the value? A. Yes, sir.

Q. Are all the claws of the grizzly bear the same value? A. No, sir.

Q. What is the difference in the value of differ-

ent claws? A. The larger claws are more valuable than the smaller ones; and the center claws are more valuable than the side claws.

Q. Were those necklaces that you saw made to wear around the neck? A. Yes, sir.

Q. How many claws were there in one necklace? A. I can't remember; but they vary.

Q. Can you give any estimate at all of the number of claws in any one of these necklaces that you speak of? A. They vary all the way from six to fifteen or twenty claws.

Q. Do you know anything about the value of such claws individually? A. No, sir.

Q. You said that you saw some squaw dresses; where do you remember seeing the squaw dresses? A. In the Fourth avenue rooms.

Q. Do you remember how many you saw then? A. One or two.

Q. Do you remember seeing any necklaces except in the Fourth avenue place? A. Yes, sir, he had squaw dresses in almost all his places.

Q. But you spoke of some that he put a price on for you; I understand you to say that he showed you some and put a price on them? A. He put a price on any object that I asked him about.

Q. Do you remember asking him the price of any squaw dress? A. Yes.

Q. Where? A. In the Fourth avenue store.

Q. Do you remember what he said was the price of the squaw dress? A. I believe he wanted $35 for that dress.

Q. Will you please describe that dress, as well as you can? A. As near as I remember it was a buckskin dress with ten small pieces of tinsel, pieces of tin roll to sound something like bells; small bells. It had a piece of colored flannel inserted, and was sewn with sinews; there was some bead work on it.

Q. Do you remember what part of the dress the 5303
bead work was on? A. Yes, it was along the skirt.

Q. Only along the skirt? A. Yes, sir.

Q. You didn't buy that squaw dress? A. Yes, sir.

Q. You did buy it? A. Yes, sir.

Q. Do you remember any other squaw dress so as to describe it, that you saw anywhere else? A. I can't recall any one squaw dress so well as this one, for the reason that I purchased this one.

Q. Do you remember any price being put on any other squaw dress than this one that you purchased? A. Yes, but I can't recall any price.

Q. Do you remember seeing in Washington 5304
square a squaw dress that was on a manikin? A. No, sir.

Q. Do you remember seeing a squaw dress there that was trimmed with porcupine quills? A. No, sir.

Q. Do you remember seeing any there trimmed with bead work on the shoulders? A. I can't recall.

Q. Don't you remember Mr. Deslions showing you, or that you saw there a squaw dress which Mr. Deslions said he wouldn't sell? A. I can't recall having seen a squaw dress there; war shirts.

Q. Don't you remember seeing a squaw dress there which he said he wouldn't sell? A. I don't 5305
remember that.

Q. I wish you would tell me, as well as you can recollect, all the articles that you bought there from Mr. Deslions? A. It is a very long list.

Q. Well, I would like to know what you bought of him? A. I have bought moccasins, leggings, war bonnets——

Q. If you can, give me the number. A. No, I can't recall just now.

Q. Well, any that you can remember just give the number. A. I began to itemize what I had

5306 bought. I can't recall now the number. I have bought so many things from so many various people that I can't remember. I have bought war bonnets, war clubs, shirts, masks, mauls, arrows, quivers, belts, various pouches, one painted calf skin, Buffalo skin, pipes and beaded papoose carriers, cradles, perhaps ten.

Q. Do you remember anything else? A. No, sir; I have bought other things, but I can't recall them all just now.

Q. But you say that what you have bought of him has cost you from $600 to $1,200? A. Approximately.

5307 Q. Will you describe the shield which you bought? A. It was an old Buffalo hide shield, trimmed with feathers.

Q. Do you know what tribe? A. It was sold to me as a Sioux shield.

Q. Is that all the description you can give of it? A. It was raw hide; it was not painted.

Q. Did it have a cover? A. No, sir.

Q. You spoke of seeing some Indian photos; when did you see them? A. Mr. Deslions brought a collection of Indian photos to my place of business at one time, and on several occasions.

Q. When did you see them? A. I can't recall
5308 just when.

Q. Within ten years? A. Yes, sir.

Q. Within five? A. I don't know.

Q. Did you ever see any except when he brought them to you? A. Not a collection of photographs.

Q. That is what you have spoken of, a collection of photographs? A. No, sir.

Q. How many did he bring to you at any one time? A. Twenty to thirty.

Q. Did you buy them? A. No, sir.

Q. Did he ever bring any others to you at any other time? A. Not that I remember.

Q. So that at one time you remember seeing 5309
about twenty photographs? A. Twenty to thirty.

Q. And when that was you can't tell? A. I can't recall the year, nor the date.

Q. Were there any names of the Indians on them, any of them? A. I can't recall.

Q. What was the size of the photographs? A. Cabinet size.

Q. Were they mounted? A. Some of them were.

Q. And some not? A. No, sir.

Q. Did you buy anything the last time that you were in Mr. Deslions' place, which you said was in Washington square? A. No, sir, not the last time I was there. 5310

Q. Did you have any conversation with Mr. Deslions about buying? A. Yes, sir.

Q. Didn't he say to you that he had nothing further to sell to you? A. He told me he didn't care to break his collection; he wanted to sell it as a whole.

Q. Did he say anything to you then about going abroad to exhibit it? A. Not that I remember.

Q. Do you remember at all how many pipes you saw at any one time? A. No, sir.

Q. Can't you give us some sort of an idea; how were the pipes when you saw them? A. They were scattered about or attached to tobacco pouches 5311
on the mantel, or so on.

Q. You can't give us any idea how many you saw? A. Not at any one time, no sir.

Q. Surely you can't tell how many you saw at all the times? A. No, sir, but he always had pipes.

Q. You don't know whether the pipes that you saw at one time were the same as the pipes that you saw at another time, I suppose? A. Some were and others were not.

Q. Do you remember what kind of pipes you saw

5312 every time? A. No, they were Sioux pipes, catlinite bowls.

Q. That is red stone? A. Yes.

Q. You spoke of having seen some collections, if I recollect right? A. Yes, sir.

Q. I think you mentioned three; did you mention that you had seen three? A. Yes, sir.

Q. One was Mr. Frost's? A. Yes, sir.

Q. Is that what you call a collection? A. A collection of Indian curios; Indian implements.

Q. They were simply what he had to sell? A. Yes, sir.

Q. How about Mr. Joste's; was that a collection
5313 or was it that he had some things to sell? A. Perhaps my definition of "collection" differs from yours.

Q. That is what I am trying to get at. A. A collection is a number of articles.

Q. That is all you mean by that? A. Yes, sir; a labeled collection or a catalogued collection; no, sir.

Q. Have you any idea of the number of the goods that Mr. Frost had? A. At any one time?

Q. Yes; when you saw it? A. No.

Q. Have you any idea of the number of Mr. Joste's, that you saw? A. Yes, sir.

5314 Q. Well; how many? A. There were one or two trunks full, about.

Q. How about the collection Mr. Root offered you? A. There were two large cases.

Q. How large? A. Perhaps three by three feet.

Q. Each way? A. Yes.

Q. Did you have the articles all out of those cases? A. Yes, sir.

Q. About how many articles would you make from the whole of them? A. I can't recall just now.

Signing waived.

ROBERT JOSTE, being duly sworn and examined as 5315
a witness for the petitioner, testifies:

By Mr. Haldane:

Q. Your residence? A. 140 East Eighty-third street.

Q. Is that your place of business? A. No, sir.

Q. Where is your place of business? A. 224 West Twenty-sixth street.

Q. What is your business? A. Artist; theatrical artist.

Q. Do you know George Deslions? A. Yes, sir.

Q. How long have you known him? A. About 5316
thirteen years.

Q. Where and under what circumstances did you first meet him? A. The first time I met Mr. Deslions I had an exhibit of Indian curios under the Astor House in Barclay street, in a book store; and he came and made inquiries there, whose collection it was, and came around to see me.

Q. What did he tell you his business was then? A. He didn't say what his business was, but he had some Indian—a few little things he had in a basket or satchel, at that time, and he invited me up to his house, to come up and see him.

Q. Where was his house? A. Third avenue, be- 5317
tween Ninth and Tenth, I think it was.

Q. Can you remember what year this was? A. That must have been about in 1890.

Q. Did you go to his house? A. Yes, sir.

Q. Did you see what sort of a collection of Indian goods he had? A. Well, he had some at that time, different things.

Q. Were they on exhibition? A. Just hanging on the wall of his room.

Q. How often have you had occasion to see what Indian goods he had on hand from that time until

5318 the time when the *Bourgogne* was lost? A. The last time I saw Mr. Deslions' Indian collection, or a portion of the collection, was in Twenty-third street near Seventh avenue.

Q. Did you see his collection when he had it on Fourth avenue? A. No, sir.

Q. Did you see his collection when he had it on Fourteenth street? A. No, sir.

Q. How often did you meet him during this time, from the time you first met him until you saw his collection on Twenty-third street? A. Oh, on and off about twice a month or so.

Q. Where did you see him? A. He would come
5319 up to my place of business.

Q. What did he come for? A. We swapped Indian goods.

Q. Did he have his Indian goods with him? A. I would usually go down to see what he had; if he had anything at all he wanted to swap he would come down, and of course I had goods in my office.

Q. What was his custom; did he usually have any of his goods with him, or carry them around? A. Sometimes he had odd pieces with him.

Q. You said on one occasion he had some goods in a basket. A. That was the first time.

Q. What was he doing with them; peddling
5320 them? A. He had some Indian goods in the basket.

Q. What for, did he say? A. They were for sale.

Q. Describe his stock or collection of goods, as particularly as you can, when you saw it on Twenty-third street? A. It was on Saturday afternoon that I stopped in there and I saw him, he had about six tomahawks I think it was, odd shaped; and he had a certain number of pipes, I should think about the same amount of pipes with porcupine quill work on the handles. And then he had I think a squaw dress, and also a Buffalo robe, a painted robe; and quite a number of pipes; a couple of war

clubs; several war clubs; I can't describe the exact 5321
amount, because I am not so much interested as a buyer is; and he had some tamtams and papoose carriers; he had two or three papoose carriers, as I recollect.

Q. Did he have any shields? A. I don't quite remember; I can't recall that; he had moccasins.

Q. Did you see any war bonnets there? A. Yes, one war bonnet I saw.

Q. Did you see any lances? A. No.

Q. Did you see any tobacco pouches? A. Yes.

Q. How many? I suppose about six, as near as I can tell.

Q. Did you see any bows and arrows, or quivers? 5322
A. I think I saw one.

Q. Did you see any war masks? A. No.

Q. Any Indian masks of any kind? A. No.

Q. Did you see any Indian baskets or leggings? A. I think I saw leggings, but no baskets.

Q. Did you see any war shirts there? A. I think I saw one war shirt.

Q. Any necklaces made either of bear's teeth or of elk teeth? A. I can't recall that.

Q. You don't remember whether you saw them or not? A. No, I can't recall that; my call was very short that day; I didn't stay there long.

Q. How were these goods arranged? A. He had, 5323
I think, the second floor front; the front room; a sort of an ante-room where he had the wall decorated; the four sides of the wall.

Q. Do you mean the front wall where the windows were? A. It was a sort of an adjoining room.

Q. Did you see any trunks or packages? A. No, sir.

Q. What did Mr. Deslions say to you as to whether he was showing you all his collection or only part of it? A. There was no discussion of that

5324 matter at all; I just made a friendly visit; it wasn't a matter of business at all.

Q. What took place between you; what did he say to you about the goods? A. I didn't come to buy at the time; I forget what the nature of the talk was; he called on me several times, and I called on him occasionally.

Q. Do you know where Mr. Deslions got any part of his stock? A. I couldn't say; I haven't seen his collection later than that, the one I just had reference to.

Q. Did you see his collection when it was in Washington Square? A. No, sir.

5325 Q. Do you know anything of a collection that Captain Wheeler had? A. Yes, sir.

Q. Where was that collection kept? A. On Governor's Island.

Q. Do you know whether Mr. Deslions purchased any part of that? A. Yes, sir.

Q. What were the facts respecting that? A. The collection was offered to me and I appraised the collection. That is, Lieutenant Hobart W. Wheeler.

Q. What year was that? A. 1899, I think.

Q. What was that offered to you for?

Objected to.

5326 A. They didn't put the price on it; I put the price on it; it was a question of what I would give for it.

Q. Did you list and appraise that collection? A. Yes, sir; I didn't list it; I appraised it; I put a valuation on it.

Q. How long have you been handling or buying or selling this class of goods? A. About twenty-three years.

Q. Were you at that time and are you now familiar with the price of such Indian articles as are ordinarily offered for sale? A. Yes, sir.

Q. What was the value of that collection of Lieu- 5327
tenant Wheeler's at the time you appraised it? A. The price I put on was $150.

Q. Did you ever speak with Mr. Deslions about it? A. No.

Q. Have you a collection of your own? A. Yes, sir.

Q. How long have you been getting it together? A. About twenty-three years.

Q. Is it got together for sale, or as a private collection? A. Just for my own private hobby.

Q. Where do you keep it? A. I have got it at home.

Q. How many separate articles are there in it, 5328
do you know? A. I should think about 450 to 500 pieces.

Q. During the period you have mentioned, that is to say, twenty-three years, have you made it your business to inquire as to the price of these articles, such as have been mentioned to you, Indian goods? A. Yes, sir.

Q. Are you still cognizant of their value, ordinarily? A. Yes, sir.

Q. Did you ever see Mr. Deslions' collection of Indian photographs? A. No, sir.

Q. Have you seen any other collections of Indian photographs? A. Yes, sir, I have one myself. 5329

Q. How do you arrive at the value of a valuation of Indian photographs? A. They are not so very rare.

Q. Taking a collection of photographs, or any single photograph, what is the criterion of value, how do you fix the value of one? A. I couldn't say exactly; they are usually all one price, according to size.

Q. Does it make any difference whose photograph it is? A. Well, yes; they are rare exceptions though.

5330 Q. What are Indian photographs of the ordinary kind worth? A. Cabinet size about twenty-five cents.

Q. And smaller sizes what? A. Smaller size—we don't have smaller sizes any more; the cabinet size is 5 by 8, and then there is a larger one; from twenty-five to fifty cents, and then they have the extra large platinum one, from a dollar to three dollars.

Q. Did you ever see Mr. Deslions' collection of Indian medals? A. No, sir.

Q. Are you familiar with that class of articles? A. Yes, sir, I have made a study of medals.

5331 Q. How is the value of a collection of any Indian medals, or any medal determined? A. They are very scarce and are issued by the United States Government.

Q. How is their value ordinarily arrived at? A. There are not so many issued; there are a few struck off of the principal chiefs that make the treaties.

Q. Are you able to give any average price of such articles? A. No, I couldn't give the price on them; you will pay most any price for them if you desire them very much.

Q. Have you any Indian pipes in your collection?

5332 A. Yes.

Q. Are you familiar with the ordinary value of Indian pipes? A. Yes, sir.

Q. What do they average? A. They average about $3.50.

Q. What would make a pipe worth more than that? A. They have different styles of pipe; they have the calumet or peace pipe, and then they have certain pipes made of a sort of a black jet; not jet, it is a black stone.

Q. What about the class of pipes called cere-

monial pipes? A. Yes, sir, they range higher, of 5333
course.

Q. How many pipes have you in your collection? A. I must have 120 or 130, or something like that.

Q. Did you ever see Mr. Deslions' collection of pipes? A. I saw part of a collection some years ago of pipes that Mr. Deslions had.

Q. Do you know of any other collection of pipes? A. No; I know that Mr. Deslions had been collecting pipes the first time I met him.

Q. Have you ever had occasion to find out the price of Indian dolls? A. Yes, sir.

Q. Do you know what they usually average? A. $3. 5334

Q. Did you ever see any that were worth as much as $15 or $20? A. No.

Q. How about Aztec masks; did you ever have occasion to ascertain the value of those? A. No, I have never collected those.

Q. Have you ever had occasion to find out the value of them? A. No, sir.

Q. Do you know anything about the value of buckskin Mexican suits? A. Not Mexican.

Q. How about cow boy suits? A. Indian; not cow boy; I don't anything about cow boy suits; I have never collected them.

Q. Do you know anything about the price of 5335
Mexican spurs and saddles? A. No, sir.

Q. What about Indian rattles; did you ever have occasion to price those? A. Yes, sir.

Q. Do you know what the average price of those is? A. They vary according to the size and what kind they are.

Q. What is the maximum and what is the minimum? A. I have bought them as low as fifty cents to three dollars.

Q. Indian drums and ceremonial drums? A. Yes, sir, tam-tams.

5336 Q. What are they worth? A. They vary from two to five dollars.

Q. What is the highest priced drum that you ever remember seeing? A. The highest price I ever paid was $5.

Q. Was that a ceremonial drum? A. Yes, sir.

Q. Are you acquainted with the value of the ordinary war club? A. Yes, sir.

Q. What can they be bought for? A. From a dollar and a half to five dollars.

Q. How about stone tomahawks? A. I haven't collected many of the stone implements; I cut them out of my collection.

5337 Q. Did you ever have occasion to inquire as to the price? A. No, sir.

Q. How about the price of steel tomahawks? A. Yes, sir, they average from about $5 to about $25.

Q. Depending on what? A. Depending on the age and the style of blade.

Q. Have you familiarized yourself with the price of Indian shields? A. Yes, sir.

Q. What are they made of? A. Originally they were made of the neck of the buffalo; the inside raw hide, and then covered with buckskin and painted.

Q. What does a buffalo shield ordinarily fetch?

5338 A. It ought to fetch nowadays I should judge about $25.

Q. Have they increased in value in the last five or six years? A. Yes, sir, they are very rare.

Q. Would the price you put on now be the price in 1898? A. Yes, sir, that would be about the price. Of course as they age the more valuable they become.

Q. What about war bonnets; what is the ordinary price of an Indian war bonnet? A. I have paid as little as $15 to $25 or $35; I don't know about anybody else's purchases.

Q. What makes the difference in value? A. The 5339
amount of feathers, and tail feathers; whether they have tail feathers.

Q. How many have you got? A. About six.

Q. How many feathers has the most expensive one? A. I guess that must have pretty near sixty feathers.

Q. What sort of feathers? A. Tail feathers; white feathers and black tip.

Q. How long? A. They range from about thirteen to fifteen inches.

Q. Do you know what a ghost shirt is? A. Yes, sir.

Q. Have you ever priced any of them? A. Yes, 5340
sir.

Q. What would they ordinarily average? A. $1.50 to $2.50. I paid for them. They are muslin shirts; they are not buckskin.

Q. What about scalps; have you familiarized yourself with the price of human scalps? A. Yes.

Q. Can you give the average price of those? A. Real Indian? There are made ones, too.

Q. Yes; the real thing? A. I have paid twenty-five dollars apiece for scalps.

Q. What is it that makes a scalp worth more, or less? A. Nothing unless it has some particular history of some chief of renown that has been killed 5341
or scalped, or where the scalp has been his property.

Q. What about Indian leggings; did you ever have occasion to find out what they were worth? A. Yes, sir, that depends on the amount of beading.

Q. What about the minimum or maximum of buckskin leggings? A. I have paid as high as from $5 to $15 a pair.

Q. And moccasins? A. About fifty cents to a dollar and a half.

Q. Indian masks? A. I never had any and never collected any.

5342 Q. Dancing sticks? A. Yes, I couldn't really recall; I happened to buy them from Mr. Frost years ago.

Q. Are they ornamented with eagle feathers? A. My own are decorated with porcupine quill work.

Q. Tobacco pouches; what do they usually average? A. The price is a little different now on account of the scarcity of buckskin. They used to be $2.50 apiece.

Q. Then the price depends on the ornamentation or decoration? A. Yes, but they are pretty near all alike, but some are larger than others.

Q. What is the highest price that you have en-
5343 countered in ascertaining the price of tobacco pouches; do you remember? A. $5 is about the highest I ever paid.

Q. Have you ever priced any Indian saddle bags? A. Yes.

Q. Are they a common article of traffic? A. They are a little scarce now. The two single bags, or the one complete?

Q. I don't know; saddle bags is all we have got to go by. Give us the price of the different kinds? A. I have sold them for $7.50 a pair, I think; I don't know what kind you have reference to there.

Q. I can't tell you, except the ordinary articles,
5344 that you would be likely to come across? A. There are some very extravagantly beaded. It depends on the amount of beading.

Q. Can you tell the highest price that you ever knew one to be held at? A. Yes, sir, I have paid as high as $20 for one saddle bag.

Q. Indian tepees? A. The miniatures?

Q. I suppose they must be; how about the full sized ones? A. They are made of canvas and have never been in the market for sale.

Q. How about the miniature ones? A. They

range from a dollar and a half to ten and fifteen 5345
dollars.

Q. You never had occasion to price an Indian tent? A. I had one offered to me for $25.

Q. Suppose it was ornamented and painted? A. It depends on whether it is skin; the old tepee used to be a buffalo skin; but nowadays they have real ordinary canvas.

Q. Indian squaw dress? A. Yes, I have priced those.

Q. What do they ordinarily bring? A. I have paid from $20 to $35. I am speaking as a dealer; my figures are as a dealer.

Q. You purchased them from dealers, didn't you? 5346
A. No; I have got them right from the traders.

Q. What do you know of the price of Indian chief suits; have you ever had occasion to price any of those? A. War shirts and leggings, and other paraphernalia, the belt, and accessories. You have got to define that a little more definitely; what does that comprise?

Q. I am giving it to you here as the claimant has asked about it? A. They all dress alike; unless the chief wears a chief's bonnet and more elaborate shirt.

Q. In this particular case it seems there were leggings and moccasins and war bonnet and fea- 5347
thers, in addition to the leggings? A. Anything else go with it?

Q. A war shield and some scalp locks; how do you estimate that? A. A thing like that ought to be itemized.

Q. You don't know any way to fix the value of that without separating the articles? A. No, I don't know what a war shield would be worth, speaking of trade prices. Some shields are worth more than others.

Q. Have you ever seen any such suit as that of

5348 various articles, all gathered together, and put together to make a complete suit? A. Yes, sir.

Q. What price have you known to be asked for such an outfit? A. They are never sold that way; you usually buy the shirt or the leggings; you don't buy a complete outfit.

Q. Indian saddles; have you had occasion to price them? A. Yes, sir.

Q. What do they ordinarily fetch? A. I have bought them for $3.50.

Q. What would there have to be about a saddle to make it worth $25 or $50? A. It all depends on how elaborate it is; it might be an elk horn saddle.

5349 Q. Quivers and arrows, have you ever had occasion to price them? A. Yes, sir, they vary according to the style.

Q. In your experience within what minimum and maximum price? A. All the way from $7.50 to $15 and $18, according to the bow and quiver.

Q. Painted buffalo skins; have you ever had occasion to investigate the price of those? A. Yes, sir.

Q. What have you ascertained? A. It depends on the condition; what sort of a shape it is, whether a bull, a cow, or a calf.

Q. Does it depend upon the character of the
5350 painting? A. Yes, sir, if it is real Indian painting.

Q. What, within your experience, have been the prices put upon such articles as those? A. $150 within the last twenty years; all the way from $100 to $150.

Q. Bear claw necklaces? A. I have only bought one.

Q. What did you pay for yours? A. $10.

Q. What sort of claws are they? A. Forty-two claws; they are mixed; some black, some cinnamon, and some grizzly.

Q. Have you priced necklaces made of elk teeth?

A. I never knew any elk teeth necklaces; they don't wear them that way. I have priced elk teeth though; they are worth from a dollar to three dollars per tooth. 5351

Q. Depending on what? A. The size of the teeth.

Q. Wampum belts? A. I have never had any.

Q. Indian cradles? A. Yes, sir.

Q. What do they ordinarily bring? A. Ten to fifteen dollars.

Q. Depending on what? A. There are two different kinds. One is decorated with porcupine and the other full beaded.

Q. How about the porcupine quills? A. $7.50 to $10. 5352

Q. And the others? A. $10 to $15.

Adjourned to Tuesday, March 3, at 2 P. M.

NEW YORK, March 3, 1903.

Met pursuant to adjournment; all the parties being present as heretofore stated.

ERNEST SCOL, being duly sworn and examined as a witness for the petitioner, testifies:

5353

By Mr. Haldane:

Q. Are you in the employ of the Compagnie Generale Transatlantique? A. Yes; I was assistant purser; I am purser now.

Q. How long have you been in that employment? A. Eleven years.

Q. What was your position with the company on the 2d day of July, 1898? A. I was assistant purser on *La Bourgogne*.

Q. Were you on the boat when she made her last trip? A. Yes.

5354 Q. You were on the boat at the time of the accident? A. Yes.

Q. Did you see the purser that morning that the *Bourgogne* sailed? A. Yes; always.

Q. Where was the purser from nine o'clock until the time when the boat sailed? A. In his room in the dock, on the pier.

Q. Where were you from nine o'clock until the time that the boat sailed? A. At the foot of the gangway.

Q. What were you doing? A. Counting the steerage passengers coming on board.

Q. Was that your duty always? A. Yes; always
5355 my duty.

Q. Were you in uniform? A. Yes. Because when the steerage passengers go on board, they cannot go back again on the pier; they must stay on board.

Q. Did you have a cap on? A. Yes.

Q. What was there on the cap? Any letters? A. Galloons, and "C. G. T."

Q. Was there anything on it to show you were the purser? A. No, but on my arms wide galloons; one on each arm.

Q. Were you requested by any one that morning to take any money to a passenger on the ship?

5356 Mr. Benedict: That raises the same question as to a transaction with a party on board who is dead.

Objection overruled.

A. Nobody asked me to take any money.

Q. How long did you remain at the foot of the gangway? A. I go on the ship the last one.

Q. Did you see the claimant, Mr. Deslions, there that morning? A. I don't remember.

Q. At that time you were assistant purser, were you? A. Yes, sir.

Q. According to the rules of the company

through whom would any deposit of money or valuables for a third-class passenger have to be made? 5357

Objected to, that the rule must be proven in some other way, if there is any such rule.

Question in that form withdrawn.

Q. If a deposit of money or valuables was made for a third-class passenger on one of your boats, would would receive it?

Objected to. Objection sustained.

Q. As a matter of fact who did, always during the time that you were in the purser's office, receive the deposits of valuables or money for a third-class passenger? 5358

Objected to; one man cannot prove what is always done.

The Commissioner: I think I will allow the question.

A. The assistant purser.

Q. That is you? A. I was he.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Did you ever receive a deposit of money, not from a passenger, but for the benefit of a passenger? 5359
A. I don't remember ever receiving such a thing.

Q. Do you know anything else about the matter except that you never received such a deposit? A. I remember I received some time, but I don't know when, before or after, things for passengers on board; and then I called the waiter and says "Go and bring that to them."

Q. You don't know whether it was before this voyage of the *Bourgogne* of after? A. I don't remember, because I make so many trips after and before, I don't remember.

5360 Q. You don't remember that like you ever did receive any such deposit, not from a passenger, but for the benefit of a passenger before this trip of the *Bourgogne?* A. I can't say.

Q. You can't say that you ever did? A. If it was before or after I don't know; but I know I received some.

Q. Not from a passenger? A. Both from somebody on the dock or somebody on the ship, I remember I received some—there was some packages, offering to send to the steerage who can't come back again on the dock.

Q. Do you remember ever having received money
5361 in that way from somebody who was not a passenger for the benefit of a passenger? A. When somebody gave me something like that, I don't know what she gives to me; it is simply a little package, and that is all I know; I don't give a receipt. When I received money I always give a receipt, and when somebody give me money I take something for the company; I charge them.

Q. You say, as I understand it, that you stood at the foot of the gangway to count the steerage passengers all that morning? A. To count the steerage passengers, all that morning.

Q. From nine o'clock until the vessel sailed? A.
5362 Yes.

Q. And you were the last one to go on board? A. Yes.

Q. Do the steerage passengers and the second-class passengers go up the same gangway? A. No.

Q. Didn't you say a little while ago that you stood part of the time at the steerage gangway and part of the time at the second-class passengers? A. No, because——

Q. Didn't you say so just now? A. No, I don't say so.

Q. You say at any rate that you did not stand

at the gangway for the second-class passengers? 5363
A. No; the second-class go by the same way as the first-class.

Q. And there you didn't stay? A. At that place the purser stands.

Q. You didn't stand there that morning? A. I never stay at the first-class gang way. I stay only at the steerage, and when the steerage gangway is out I go on the first by the first-class gangway.

Q. Did Mr. Faguet come to the steerage gangway? A. Never anybody only the steerage go by the steerage gangway; nobody can go by them, because if somebody goes in I must count them.

Q. My question was whether Mr. Faguet ever 5364
came to that gangway? A. Yes, he was walking on the pier.

Q. Walking up and down on the pier? A. Yes; always.

Q. But whom he spoke with on the pier you don't know, do you? A. No, I don't know.

ROBERT JOSTE, resumed:

By Mr. Haldane:

Q. Do you know of a collection that Mr. Deslions got from Capt. Wheeler? You testified the other day that you appraised it, didn't you? A. All I 5365
have got to vouch for is Mr. Wheeler's letter to me——

The remainder of the answer is stricken out on motion of claimant's counsel.

Q. Can you describe any of the articles in that collection? A. Some of them, yes.

Q. What condition was the collection in generally as to the articles being perfect or imperfect? A. The most valuable and principal articles were buffalo robes which were destroyed by moths.

5366 Q. Was there a squaw dress in that collection? A. Yes, sir, there was a very good squaw dress there, heavily beaded at the top. I saw it hanging in the room over a chair, with a pair of Apache woman's leggings and moccasins all in one.

Q. Was the squaw dress an Apache dress? A. No, it was a Sioux or Arapahoe squaw dress.

Q. Have you ever been to the Pine Ridge Reservation? A. Yes, sir.

Q. When? A. 1893, World's Fair time.

Q. Who was in charge of the reservation then? A. I don't exactly know who was in charge of Pine Ridge; I stopped at a little house opposite the
5367 water tower; a German kept it, where all the visitors stop.

Q. Is there a railway station at Pine Ridge Agency? A. No, sir; at Rushville.

Q. How near is the nearest? A. The nearest railway station is Rushville to Pine Ridge.

Q. How far is that? A. It would take you, I should judge, to drive with a team, from seven in the morning till two in the afternoon.

Q. When you were there in 1893 was there any store on the Reservation except the Government store? A. At Pine Ridge, yes.

Q. Where was that? A. There were several
5368 stores; at Pine Ridge on the Reservation.

Q. Did you see or hear of a Capt. Phillips there? A. No, sir, there is no military station there—Indian police.

Q. Do you know what is necessary for a person to do in order to get upon the Indian Reservation at Pine Ridge for the purpose of trading with the Indians? A. You don't trade with the Indians at the Reservation.

Q. I am asking you on the Reservation what you have to do in order to trade with Indians on the

Reservation? A. They don't allow you to trade; 5369
they stop you—the Indian police stop you.

Q. What does the agent allow you to do?

Mr. Benedict: Is there any regulation or rule.

Q. Did you get any permission to go on the Reservation?

Objected to as immaterial.

A. I don't understand what you are getting at.

Q. I want to find out from your knowledge, if you have any on the subject, what it is necessary for any person to do to go upon the Reservation for the purpose of trading with the Indians? A. 5370
You don't trade with the Indians. You trade with the general store there—what they call these licensed traders that have a store at the agency; he is licensed by the government.

Q. What do you know about the possibility of persons trading on the Reservation with the Indians themselves?

Objected to as immaterial.

The Commissioner: If he knows, I will allow him to answer that.

A. I can only give the experience I went through.

The Commissioner: That is not material in this 5371
case.

Q. Did you make any effort to trade with the Indians? A. Yes, sir.

Q. What was the result?

Objected to as immaterial. Objection sustained.

Q. Did you give the name of the agent who was in charge at the time you were there? Do you

5372 remember who it was? A. Not at Pine Ridge; I don't remember who was at Pine Ridge.

Q. You were asked the other day about the value of scalps. Do you know of any trader in Indian curios in any part of the West that handles and sells scalps?

Objected to as immaterial. Allowed.

A. Yes, sir.

Q. What is his name? A. Elisha C. Squaggins. I don't think it is right that I should give away my private business.

Q. Do you know a trader named Stilwell in Dead-
5373 wood? A. Yes.

Q. Is he still there, do you know? A. Yes, sir.

Q. Have you ever seen a catalogue of his? A. Yes, sir.

Q. Do you know a man named Jake Gold of Santa Fe, New Mexico? A. I have done business with him.

Q. Have you ever seen a catalogue of his? A. Yes, sir.

Q. Have you got those catalogues? A. Yes, sir.

Q. Will you produce them? A. That is going into my private business again. I don't think it is right that I should give people access to my papers.

5374 Mr. Benedict: I shall object to them as immaterial.

The Commissioner: I don't see how the general catalogue would be of any relevancy here.

Q. Did you ever purchase any game bags from any dealer in the West? A. Yes, sir.

Q. What is his name? A. I don't think it exactly right that I should give away the names of the people I have been doing business with. It has put me to a great expense and a good many years' trouble to locate these people.

Mr. Benedict: Unless you confine it to bring it 5375
somewhere near to this case, I don't see that it is material.

The Commissioner: If counsel insists upon an answer the witness must give it.

A. Johnson Brothers.

Q. What kind of a gamebag was that? A. The measurements must have been—the face was about 22 inches square, of woven beadwork, and a band from there which I should judge runs up over the shoulders, sort of a strap that hangs to the bag, about six inches wide, fully beaded, woven.

Q. How long is it since you bought that, about? 5376
A. About three years ago.

Q. Do you know what the market value of it was? What was the fair value of it? A. That depends on whatever you pay for it; how cheap you can buy it.

Q. Have you priced that class of articles very frequently? A. I have priced them; but I buy them from the dealers.

Q. What was this gamebag worth? A. Do you mean to say what I would sell it for, as a dealer?

Q. What is it worth? A. It is worth whatever the party wants to pay for it; how much he desires to have it.

Q. Is that the only test of value in such goods? 5377
A. Not as a dealer.

Q. What did you pay for the gamebag? A. I think about $6.50 or $7; as near as I can recollect.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Where were these dealers, Johnson Bros.? A. I don't think I should give my private affairs, to say where these people are located.

The Commissioner: Answer the question.

5378 A. Black Jackson County, South Dakota. They have changed it; they call it Interior now, I believe.

Q. You have given on your previous examination various prices of articles. Were those the prices that you had paid to dealers for them? A. Yes.

Q. In all cases? A. Yes, sir; with one exception.

Q. With what exception? A. When I bought as a portion of a collection.

Q. What collection was that? A. That was an army officer's collection.

Q. Who was the army officer? A. One by the name of Lieutenant F. B. Crew.

Q. Did you buy that here? A. At David's Island;
5379 a portion of the collection—13th Infantry.

Q. When did you buy that? A. In the winter of 1893.

Q. You didn't give any prices in your previous testimony based on that purchase, did you? A. No, sir.

Q. You spoke of seeing some articles that belonged to Lieut. Wheeler? A. Yes.

Q. Do you remember how many there were? A. I couldn't count them; I couldn't say the exact amount.

Q. About how many? A. I couldn't give you that.

5380 Q. A dozen? A. I don't know whether what I seen comprised the whole of his collection.

Q. I am only speaking of what you saw? A. I don't really recall how many pieces there were.

Q. You can't give us any knowledge as to how many pieces there were? A. No; I couldn't give you anything as to how many pieces there were; it is quite some time since that happened.

Q. How did you arrive at a price of $150? A. I looked the collection over and among the pieces I calculated that the pieces that I seen there that

were fit to have, and the amount that I could stand 5381
would be about $150.

Q. Can you tell us what those pieces were? A. Yes, sir; some of them.

Q. Tell me what those pieces were? A. One was a good squaw dress, heavily beaded at the top, and a pair of moccasins—they didn't belong to the squaw dress, but when I see the squaw dress it was hanging over a chair and the leggings were underneath; the leggings were all in one piece; they were Apache, because I recognized them by the shape of the toe.

Q. Anything else? A. Yes; there was several buffalo robes well garnished with the hair all off of 5382
them. There were as near as I can recall two tomahawks, several pipes, one in particular with the shape of a tomahawk, the bowl was broken. There was a peculiar shaped war club that I recollect. I think there was an Indian flute among that collection, and several scalps with the hair off, where the moth had eaten them, and the hair was hanging down on the buffalo robes; and I think there was several bows with quivers. It is so long ago I can't quite recall all that I have seen, but I valued what I seen at $150. I was willing to pay that—what they were worth to me.

Q. You didn't buy them? A. No; I didn't buy 5383
them.

Q. You couldn't get them at that price? A. I didn't say that. I made the offer.

Q. And it was refused? A. It was not refused.

Q. But you didn't get them? It wasn't accepted? A. No; I didn't get them.

Q. It wasn't accepted? A. It wasn't refused.

Q. It wasn't accepted, was it? A. I never heard from him since.

Q. You didn't get them at that price? A. I didn't get them at that price.

5384 Q. When was it that you saw those articles of Lieut. Wheeler? A. About 1897. If I refer to a letter I can tell you about the date. It is so long ago, I never kept track of this thing.

Q. Can you give us any value on any particular article that you saw there? A. As a dealer?

Q. Yes, as a dealer? A. I can, yes, sir.

Q. What one? A. The squaw dress.

Q. As a dealer what do you say you would give for that? A. $35.

Q. Would you sell it for that? A. No, sir.

Q. What would be the value of it to sell? A. There is no fixed price on those things.

5385 Q. What would you sell it for?

Objected to as incompetent and immaterial. Allowed.

(No answer.)

Q. Have you sold that squaw dress? A. I didn't have it.

Q. If you had that squaw dress what would you charge for it to sell?

Objected to. Allowed.

A. I wouldn't sell it.

Q. You wouldn't sell it at all? A. I would keep it.

5386 Q. Was it such a fine specimen that you wanted to keep it? A. It was a good A No. 1 specimen of a squaw dress.

Q. Was there any history attached to it? A. Not that I know of.

Q. Did you have any communication with Lieut. Wheeler himself? A. Yes, sir.

Q. By letter? A. Yes, sir.

Q. Did he give you a list of the articles? A. No, sir.

Q. Did you ever make any list? A. I made no 5387
list, no sir.

Q. How do you know that the articles that you speak of were included in Capt. Wheeler's collection? A. He instructed me to go over to the Island and I took a friend with me; there was a gentleman there, an officer; an attendant took us upstairs and showed us the Lieut. Wheeler collection.

Q. Didn't you see any catalogue of those articles? A. I saw no catalogue at all.

Q. These prices which you have given then are not as you mean to testify the values at which things would be fairly sold here in the market? A. As an individual you couldn't buy them at that 5388
price.

Q. You spoke for instance of photographs and you said that Indian photographs of the ordinary kind would be worth about twenty-five cents apiece? A. Up to a dollar and something.

Q. Have you ever sold any? A. No, sir.

Q. Have you ever bought any? A. Yes, sir.

Q. When have you ever bought any Indian photographs? A. Right along from time to time.

Q. How many have you got that you have bought? A. I must have a little over a hundred, I should judge.

Q. How far back do those photographs date, the 5389
earliest of them? A. I have got some that I have collected way back around 1876.

Q. Do you say that those photographs are not worth more than twenty-five cents apiece? A. They are.

Q. They are worth very much more, aren't they? A. Yes; but you can still get duplicates; the negatives are still in existence.

Q. If the negatives are not in existence then, of course, they are very much more valuable, are they not? A. You can copy them.

5390 Q. I am asking about their value. Then they are very much more valuable, are they not? A. As an original they should be more valuable, yes.

Q. And if there was in addition on the photograph the autograph of the Indian, wouldn't that add to their value? A. Very few Indians can write.

Q. I didn't say a written autograph; I said autograph? A. Yes, if there is; sure.

Q. You said that the ordinary value of Indian pipes averaged about $3.50? A. Up to——

Q. $3.50 is all that I find here? A. I gave another figure there. I beg your pardon, you are
5391 right. Taking them in bulk, in the lot.

Q. That would be the ordinary price for ordinary—— A. From $1.50 to $7.50, about.

Q. For ordinary pipes? A. Some good ones.

Q. But ordinary pipes, nothing peculiar about them? A. If you average it you have got to take the good with the bad—cheap pipes with the good pipes.

Q. Do you mean by that that you would buy them at the same price if they are all of different make or all of the same make? A. No; if you average a thing, you take the good with the bad, make an average, don't you? From $1.50 to $7.50—
5392 I split that and make it $3.50.

Q. Then do you mean to say that there is no Indian pipe but what you could buy for $7.50? A. No, I don't say that; no.

Q. On the contrary there are some Indian pipes that are worth very much more than that, are there not? A. Yes; there are some pipes that some people don't want to part with; I have some that I wouldn't sell at any price.

Q. The antiquity makes a difference in the value, doesn't it? A. Yes.

Q. The shape makes a difference in the value,

doesn't it? A. It depends on the shape; pipes are 5393
almost all one shape, except the handle and the bowl.

Q. If they are of different shapes, the difference in the shape makes a difference? A. The difference in the shape makes a difference.

Q. A tomahawk pipe would be worth more than a simple plain pipe? A. That is a different thing—that is a tomahawk pipe.

Q. And the substance of which they are made would make a difference in the value, would it not? A. My testimony as a dealer is what I bought goods at, and not as a connoisseur.

Q. You don't mean your testimony to be under- 5394
stood as being the testimony of a connoisseur in values, do you? A. You are asking me two questions: What I would sell at and what I can buy it at.

Q. I haven't asked you any such questions. I will show you a photograph of some pipes, Exhibit 1? A. They are not all Indian pipes.

Q. You wouldn't undertake to say, would you, that such a collection of pipes as that was worth only $3.50 aiece? A. No, not such pipes.

Q. Worth very much more than that, wouldn't they be? A. I am not interested in these pipes. (Referring to pipes other than Indian pipes.)

Q. Confine yourself to the Indian pipes there. 5395
I ask you whether you wouldn't say that those Indian pipes that you see there would be worth very much more than $3.50 apiece? A. Some of them, yes.

Q. Take them all through? A. No; I see several there that I wouldn't give more than that for.

Q. But you see others that you would give very much more than that for? A. Yes.

Q. And you speak now as a dealer? A. Yes.

5396 Q. You never saw that collection of pipes, did you? A. No, sir; I never saw that.

Q. Do you remember seeing any of them in Mr. Deslions' collection? A. I haven't seen Mr. Deslions' collection.

Q. Of pipes? A. Not of pipes, no, sir.

Q. Didn't you ever see any of Mr. Deslions' pipes? A. I have seen three or four or five, or six or seven, on and off; but not a whole complete collection like this.

Q. Look over them and see if you remember to have seen any of them? A. No; I don't seem to recognize any of these.

5397 Q. You speak of Indian dolls. Would not the value of an Indian doll be increased if it was a representation of a particular and distinguished Indian? A. I have never seen one like it.

Q. You wouldn't speak of the value of any such doll as that? A. No.

Q. You spoke about rattles and the number of rattles. What kind of rattles? A. Medicine rattles.

Q. What were they made of? A. Rawhide; inside some of them have pitch in and some have pebbles in; different sorts.

Q. What kind have you bought? You said you
5398 had bought them as low as 50 cents to $3? Just give a description of the difference between the two? A. I bought a Sioux medicine rattle for 50 or 75 cents; I bought one from Crew for $1.50.

Q. Can you describe it? A. Yes, sir; it is pear shaped, with a bear; it represents a sort of a demon on the face of it in the drawing of a snake; and the back of it is made of the hair of a bear. The whole thing is in fact made of bearskin; but the front portion of it is shaved off and burned, represening some hideous demon. I have had several others that I bought.

Q. You spoke of $3 as one. Can you give a de- 5399
scription of a $3 one? A. Yes, sir. I have got one about eight inches, covered with rawhide, something rawhide underneath it, covered with a young buckskin and painted with a red circle at the top with a feather hanging from it and a green ring on the outside.

Q. That is the price you paid to a dealer for it? A. Yes.

Q. You don't consider that is all it is worth here to-day, do you? A. I wouldn't sell it for that.

Q. Do you know whether there are other kinds of rattles besides those which you have got? A. Yes, there are a great many different kinds; so 5400
many different tribes of Indians.

Q. Can you tell me of any other kind of rattles that you have seen besides those, what they are made of? A. Zuni Indian rattles, which I don't possess myself; I have seen them in the Smithsonian and other collections.

Q. What were they made out of? A. Different. Some made of rawhide; I have seen a buffalo horn hollowed filled with different stuff, different, all kinds. I see some made in the shape of gourds.

Q. You have spoken of drums, tomtoms? A. Yes.

Q. You said that the highest price you ever paid was $5? A. Yes. 5401

Q. What was that drum made of? A. It was a circular box measuring about 18 inches in width and about 10 inches high, covered with rawhide, and a painting of a bull on it; it was a Ute drum. I bought that from a trader at Minko, Colorado.

Q. You didn't consider that is all it is worth here, do you? A. No, I wouldn't sell it for that.

Q. Did you ever see an Indian drum that was made by hollowing out a tree that was covered with a buffalo head? A. I think I did. If I am not mistaken, some one had it here in New York.

5402 Q. Is that kind of drum common or very scarce? A. They are scarce. I think it is in the Museum of Natural History.

Q. Did I understand you to say that you had bought any Indian shields? A. Yes, sir.

Q. When did you buy any shields? A. I bought two from Lieut. Crew; I don't recollect; the price was pretty low; I don't recollect what I paid him for it.

Q. Whatever you paid you wouldn't consider that that was the value of the shields now, to-day, would you? A. What I have bought so far I don't want to part with.

5403 Q. If you were going to part with them you wouldn't part with them for the price that you gave? A. No, sir.

Q. How long ago was it that you bought that shield? A. I bought two shields about the same time, in the winter of 1895.

Q. Ten years ago? A. Yes.

Q. As to the price of shields, that is all the knowledge you have? A. No, sir; I have catalogues of shields.

Q. I am speaking about prices to sell here? A. That is not the only shield I bought.

Q. I asked you the last that you bought. I understood you to say that that was the last? A. Yes;

5404 in 1893 as the last I bought.

Q. Do you know anything by which you can fix a value at the present time?

Objected to as immaterial.

Q. Have you any knowledge of any sale of any shield since 1892 or 1893 that you spoke of? A. Yes. I bought two, I think. I must correct myself, I bought two from this man Squaggin.

Q. When? A. After 1892; several years after; must be around seven years ago.

Q. And that was bought from a dealer? A. From 5405
a dealer; from a trader.

Q. And bought by you as a dealer? A. As a dealer.

Q. My question is whether you have any knowledge by which you can say of the value of a shield here in New York since that time? A. Among dealers, yes.

Q. I am not asking about dealers. To sell in the market? A. Some people won't buy Indian goods at all. Some will give big prices for them.

Q. Can you give us any valuation of shields here in New York later than that time? A. No, sir.

Q. Did I understand you to say that you saw 5406
any war bonnets of Mr. Deslions'? A. That is some time ago, in Twenty-third street

Q. At any time? A. Yes.

Q. I show you a photograph and ask you if you saw any bonnet like that? (Referring to Exhibit 4.) A. No; that isn't the one I seen.

Q. You were asked about saddle-bags and gave some testimony about them. Do you know of any sales of saddle bags? A. Not particularly saddle-bags; they don't come in sales.

Q. Have you ever sold any saddle bags? A. Yes, sir; if I am not mistaken I think Deslions bought a pair from me once.

Q. When have you ever sold a saddle bag? A. I 5407
sold saddle bags two years ago.

Q. To a dealer? A. Yes; right here in the city.

Q. He was a dealer? A. He wasn't a dealer; he had a store where he sold things; not a regular dealer though.

Q. He wasn't making a collection? A. No, sir.

Q. What was the description of those saddle bags? A. They were two single bags, I think square saddle bags, decorated with porcupine, somewhat beaded, and these tin bells; buckskin bags.

5408 Q. Have you ever sold any Indian saddles? A. Yes, sir.

Q. When have you sold them? A. Sold one last winter.

Q. What kind of a saddle was that? A. It was a wooden frame covered with rawhide, with stirrups and accessories to it.

Q. Did you sell that to a dealer? A. I sold that to a collector.

Q. Who was the collector? A. Mr. Enhoff.

Q. That was a full saddle or only the saddle tree? A. The saddle tree covered and everything, with the stirrups and accessories; stirrups and all.

4509 Q. What did you sell that one for? A. I got $7.50 for that.

Q. Do you know of any sale of Indian painted buffalo robes? A. Never seen a sale; I have seen some, but they were painted; but no hair on them.

Q. Do you know the difference between painting and pictography? A. Yes.

Q. When you speak of his painting on the robes without any hair on them, do you mean that they are pictographic painting or simply painted? A. No; they are pictographic painting; some in the shape of ornaments and others with the history of the Indian, giving his different battles.

5410 Q. That makes it much more valuable? A. Yes, sir; provided it is done by an Indian.

Q. Did you say that you had know of sales of such articles as that? A. Yes.

Q. How lately? A. They were not in good condition in robes that I have seen; had no hair.

Q. How lately have you known of the sales of any that were in bad condition? A. I have attended the sales.

Q. When? A. This same lieutenant had a lot of them.

Q. When? A. The winter of 1893.

Q. Did you say that in Mr. Deslions' collection you saw any necklaces of bears claws? A. I didn't see Mr. Deslions' collection. 5411

Q. In what you did see of his collection you don't remember seeing any necklaces of bear claws? A. I can't recall that I did see a bear claw necklace.

Q. I show you a photograph of a bear claw necklace. Did you ever see a bear claw necklace equal to that? A. I cannot recollect these claws; I have got one pretty near as good as that. Yes, sir, I have seen one as good as this.

Q. Have you ever known of its being sold, as good as that? A. I bought one.

Q. As good as that? A. The claws are not quite as long as they are here. There are 42 claws in mine. 5412

Q. The value of the claw increases very largely with the increase in size, doesn't it? A. Yes; especially with a grizzly bear, the bear is almost extinct.

Q. Do I understand that you have one now? A. Yes.

Q. Is it all grizzly? A. Some of it; not all; a few.

Q. How many grizzly bears? A. I couldn't tell; a little grizzly; a little black; some cinnamon.

Q. Grizzly bear claws are more valuable, are they not, than the others? A. So I understand. 5413

REDIRECT BY MR. HALDANE:

Q. What did you pay for that? A. $10.

By Mr. Benedict:

Q. Did you buy that of a dealer? A. I bought that from a private individual.

5414 By Mr. Haldane:

Q. What did those buffalo painted robes sell for that counsel asked you about, with pictographic work on them? A. I didn't bid on them; they were sold pretty reasonable.

Q. Do you remember what they went for? A. Col. Clous, I think, was the name, at David's Island.

Q. You said you saw some with the hair in bad condition, but they had pictographic work on them? A. I didn't want them. I told Mr. Deslions of them at that time, after I had bought that collection.

Q. Do you know what they sold for? A. I

5415 couldn't say; no.

Q. What is it that makes a buffalo robe of that kind valuable; the hair or the pictographic work? A. At one time you could have bought buffalo robes for $3 apiece; I remember having seen them.

Q. I mean that kind of buffalo rope with pictographic work on it. What increases its value; the hair side or the painted side? A. I have seen robes come in there thirty years ago all full of painting; had old furs wrapped in them.

Q. What was it that gave them the value; the hair or the pictographic work? A. The hair in particular; whether it was a bull or a calf.

5416 Q. So a buffalo robe in good condition without any pictographic work is worth more than a buffalo robe that has lost the hair, even though it has pictographic work on it? A. I would sooner have the hair robe; the hair robe is the most valuable.

Q. Then where is it that the pictographic work comes in? How does that increase the value of the robe? A. It increases the value to a certain percentage. I never knew of any fixed price, according to the painting; unless you take a particular fancy to the design and the way the painting is executed.

Q. Those catalogues and things that you have got which you objected to my asking you to produce—are you willing to produce them now for the use of counsel, or do you object to it? A. I don't think it is the proper thing for me to turn over my private affairs and private correspondence and business; the bills are made out in the shape more of a letter with an itemized statement and price of the goods. I will turn over the printed catalogue to you. 5417

RECROSS BY MR. BENEDICT:

Q. If there was a collection of articles not merely for sale, but to be a historical collection of Indian curios, would you consider it complete without a specimen of pictography? A. No; I would not. 5418

Q. I don't understand that you have known of the sale of any buffalo robe since 1893? A. I sold one myself last fall; a calf robe.

Q. With the hair on it? A. With the hair on it; and garnished with porcupine with silver heads.

Q. Any painting or pictography? A. No painting on it, only it had the shape of the horns—the peculiar design of the Sioux, the Cheyenne.

(Signing waived.)

Mr. Haldane: I ask for an adjournment of a week with the proviso that if in the meantime commissions should be applied for, we may not be ready to go on. 5419

Mr. Benedict: I shall oppose any application for commissions most strenuously.

Adjourned to Tuesday, March 10, 1903, at 2 P. M.

5420 NEW YORK, March 10, 1903.

Adjourned to March 13th, at 2 o'clock.

NEW YORK, March 13, 1903.

Adjourned to March 17th, at 2 o'clock.

NEW YORK, March 17, 1903.

Adjourned to March 19th, at 2 o'clock.

5421 ---

NEW YORK, March 19, 1903.

Met pursuant to adjournment.

Present—The COMMISSIONER;
Mr. BENEDICT;
Mr. HALDANE.

Mr. Haldane: In reference to the records from the Municipal Court, I have had the pencil endorsements put on as well as I can, and produce the paper herewith again.

Mr. Benedict: The marks are not put on as they
5422 were on the original.

Mr. Haldane: It is the same language, but on a larger vacant space on the paper.

Mr. Benedict: My recollection is that there was more than is put on here.

The Commissioner: Is it certified?

Mr. Haldane: It was certified before.

Mr. Benedict: I will take the paper and compare it with the original paper, if you have no objection.

Mr. Haldane: That is perfectly satisfactory to me.

The paper is delivered to Mr. Benedict.

CHAUNCEY W. RIGGS, being duly sworn and ex- 5423
amined as a witness for the petitioner, testifies:

By Mr. Haldane:

Q. Are you sure that Chauncey W. Riggs is your name? A. That is the name I have always been known by; I am quite sure of it; that is the name I have been known by since infancy.

Q. The claimant in this case has sworn on page 218 that he knew you, but that Riggs was not your name. Do you know of anything in your acquaintance with Mr. Deslons that authorizes him to make such a statement as that? A. Excepting the general course of the swearing all the way through. 5424

Q. You have read this record, have you? A. I have.

Q. Were you know to him by any other name than Riggs, when you knew him? A. No, sir.

Q. What is your business? A. I have handled curios since the winter of 1884-85, about seventeen years.

Q. Are you in business in the City of New York now? A. Yes.

Q. Where? A. 41 University Place.

Q. Please tell the Commissioner the extent of your dealings and operations in connection with Indian curios, giving briefly but still in detail the par- 5425
ticular matters in which you have been engaged, so as to show your knowledge of the business? A. Well, I began by making a personal collection, a collection of antiques, generally called mound builders' relics, excavating mounds in the southern country, on the St. Francis River.

Q. In what territory is that? A. Arkansas. I made collections there which were afterwards sold to the Field Columbian Museum of Chicago, the Art Museum of Cincinnati; some went to the Smith-

5426 sonian Institution, and a good many went abroad; there is a collection in the Brooklyn Institute of Arts and Sciences; there is a large collection in the Library Building in Buffalo, or was, the last time I saw it; that is where the collection was landed, and that covered a period of probably eight years; the rest of the time, or a large part of it, I wouldn't say all the time—I am interested in other matters; however, that came from investments from the money originallly obtained in the handling and dealing in curios.

Q. Indian curios? A. Indian curios and antiques.

5427 Q. During the period that you have mentioned have you been employed or connected with any commercial houses in the United States, in giving exhibitions of Indian curios in connection with their business? A. Yes, sir.

Q. Name some of those places? A. I have made three decorative exhibitions and sales with John Wanamaker, twice in New York and once in the Philadelphia house; I have made sales with Joseph G. Darlington, of Philadelphia.

Q. What is their business? A. They are a house on the order of Arnold Constable here in New York; they cater to the high-class trade in Philadelphia.

5428 I have been twice with Shepard, Norwell & Company in Boston; once with Johnnie Shepard in Providence, Woodward & Lothrop in Washington; A. A. Vantine in New York City; Hutzler Bros. in Baltimore.

Q. What was the class of goods that were exhibited at these places by you? These were all exhibitions weren't they? A. Exibitions and sales; special decorative exhibitions.

Q. In the course of the period of time that you have mentioned will you state whether or not it is

a fact that you have been extensively advertised as 5429
an expert in this class of goods?

Mr. Benedict: That is of no consequence.

Mr. Haldane: It is, in view of the claimant's statement that this witness doesn't know anything about this sort of thing.

Q. I hand you a book; state whether these press notices here are press notices of you and your exhibitions in Indian curios? A. Press notices and advertisements all the way through.

Q. What period of time do they cover?

Objected to as immaterial. Allowed.

5430

A. That book covers between 1887, I think, and the present time, partially; from the time the first sale was made with Joseph G. Darlington, it gives the exact date on the circular.

Q. The claimant here has testified on page 218 of the stenographic notes that you are no authority in this line, connected with these Indian curios, etc., whatever, and that you have made mistakes which a child would not be allowed to make. What has been the extent of your transactions and dealings with the claimant? A. Very limited.

Q. How many times did you ever see him in your life, about? A. I couldn't say as to that; perhaps 5431
three times, perhaps more than three; he has been to my place about three times, as I remember; perhaps six or eight times altogether; I couldn't say for sure as to that.

Q. Did you ever make any mistake in any dealings with him to which he ever called your attention? A. Not that I know of; I have made mistakes in my business career undoubtedly.

Q. I mean mistakes as to the value of goods of this kind.

Objected to as immaterial. Objection sustained.

5432 Q. Did he ever meet you in Mexico? A. No, sir.

Q. Or anywhere else in the West? A. Not that I know of.

Q. Did he ever come to see you to collect a bill against you?

Objected to as immaterial. Allowed.

A. No, sir, not that I know of, not that I have any remembrance of; he has never had a bill against me personally, and I can't think of any possible bill that he ever could have presented.

Q. This was a bill for some blankets that somebody had sold you? A. Oh, no, no, sir.

5433 Q. Did you ever see his collection? A. Yes, sir.

Q. Where, and when? A. I saw what I supposed was his collection; the largest part of it.

Q. Who showed it to you? A. He did.

Q. Where? A. In the south side of Washington Square.

Q. How long was that before the loss of this steamship, the *Bourgogne*, which was lost in July, 1898? A. It was during my Wanamaker sale which was March 11th, I think, and ended May 14th; it was some time during that sale; I think about the middle, but I couldn't give that exactly; it was some time during that sale.

Q. Where were the articles that he showed you?

5434 A. They were in a room in Washington Square.

Q. But how were they displayed? A. They were about the walls; displayed about the walls.

Q. Do you know, from anything he said, whether he had any more articles besides those that were on the walls? A. Yes, sir, he said he had a couple of cases back.

Q. You didn't see those? A. I didn't see those.

Q. During the period that you have mentioned have you been engaged constantly in purchasing

and selling Indian curios and curiosities? A. Al- 5435
most constantly.

Q. And that is still your business, is it? A. No, I am changing; my time has become too valuable and I have been dropping off in the last year and a half.

Q. Up to that time that was your particular occupation, was it? A. Yes, sir.

Q. Did you ever see the claimant, Deslions, while you were giving an exhibition for John Wanamaker? A. Yes, sir.

Q. What year was that in? A. That was in 1898, during the sale there.

Q. Where did you see him, at Wanamaker's? A. Yes, sir, in the exhibition room. 5436

Q. What took place between you and him at that time? A. He was over there, I think—I wouldn't say how many times—he invited me to come and see his collection and he wanted to make some exchanges, and I told him then that I would be willing to exchange some of my stuff for smaller things, little things, my collection was somewhat deficient in what I term the commercial stuff such as is made by the Pueblo Indians, and that is sold largely to tourists, but for which there is quite a demand; in fact it sells more readily than larger pieces when the fancy price is put on them. He wanted to exchange some stuff for baskets. I told him 5437
that——

Mr. Benedict: Is this conversation material?

Mr. Haldane: Certainly; Deslions says that he did not know this man Riggs.

Allowed.

A. (Continued.) He wished to make some exchange for baskets, and laid off some things he brought there——

The rest of the answer, on motion, is stricken out.

5438 The Witness: Previous to that I had been to the collection at Washington Square and looked it over carefully and estimated its value as closely as I could.

Q. In the course of your transactions in this class of goods have you ascertained what different methods there are of putting a value upon them? A. Yes, sir.

Q. State to the Commissioner, in the course of your experience how many ways there are of putting a value upon this class of goods?

Objected to as immaterial. Allowed.

5439 A. They might be divided into four values, I think; there is first the value that the Indian receives; there is, second, the value that the trader places upon them; then there is the value that the dealer here in the East places upon them; and there is what is called a collector's value; I should class them in those four classes.

Q. What relation has this collector's value, that you speak of, to the real market value of the goods? A. It is invariably fictitious.

Q. In what way? Q. How does that come about? A. A person in collecting forms an affection for these things; it is a peculiar business, or fad you
5440 may say; they get a piece—the circumstances that surround getting it, the party you get it from, where you get it, all the data, the history that surrounds it is a chief element of its value to a collector. The pleasure of getting these things by a collector is paramount to all else. That is from my point of view, and I have talked to hundreds of other collectors, and they seem to feel the same way towards those things that I did before I quit collecting, from a personal point of view and began my career as a dealer.

Q. You were a collector once, were you, not for

purposes of sale, but for purposes of private grati- 5441
fication? A. Well, I think I might have been actuated by an ultimate sale; I was, but I collected for years before I got a dollar out of it.

Q. Where did you keep your collection? A. Brought it to Cincinnati, generally, most everything at the Art Museum in Eden Park, Cincinnati; they always kept them stored, whatever I would send them, and I would exhibit what I pleased.

Q. When were you the proprietor of this collection which you had collected for your own private gratification what value did you put upon your collection, as a collector?

Mr. Benedict: The witness said it was a mound- 5442
builders' collection, not a collection of Indian curios.

Q. Was it an Indian collection? A. The question between Indian collection and mound builders' collection has never been definitely settled; the best authorities say that those goods are Indian; other good authorities say that they were mound builders.

Q. In your collection did you have any of the class of goods referred to in the testimony in this case, which you have read? A. Well, I don't—if he had antique pipes, yes. 5443

Q. Any Indian dresses? A. Not in that particular collection, that is, that I refer to as my main personal collection that I built up this glamor around, from which I took a big drop when I came to sell it.

The rest of the answer, on motion, is stricken out.

Q. Do you know anything of the value of Indian photographs? A. Yes, sir.

Q. In the course of your business have you han-

5444 dled them, or observed the price at which they were bought and sold? A. Yes.

Q. What is the average price for Indian photographs? A. The average price I wouldn't like to state without sitting down and making figures on them; they range from 2½ cents, Rhinehart's pictures that retail for ten cents and twenty-five up to $2.50 for some of the finest steel plates. There are photographs of course in a few instances in which they are higher.

Q. Is it possible to put an intelligent value upon Indian photographs, without having some description of the photograph itself? A. Yes, it would be
5445 a commercial value; they sell like any other pictures.

Q. But how would a person who desired to appraise photographs of any of these grades be able to arrive at an appraisal unless he either saw the photograph or had a description of it? A. It would be pretty hard stuff to appraise anyhow.

Q. Why? A. If you put that under the hammer it would bring practically nothing. I never counted them for much in my collection.

Q. The claimant has testified that he had about 500 Indian photographs, some of which he bought in Chicago and some he bought at Doris' Museum; did you ever see any of those Indian photographs
5446 at Doris' Museum? A. No, sir, I never heard of any.

Q. In the course of your dealings in this class of goods have you ever had occasion to ascertain the value of Indian medals? A. No, I have not.

Q. Do you know what Indian medals are? A. Yes.

Q. Have you ever seen any of them? A. Yes.

Q. Where? A. I saw several with Mr. Deslions.

Q. Did he offer to sell you any of them? A. I couldn't say as to that.

Q. Was any price put upon them, or was there 5447
a value mentioned? A. I couldn't say as to that.

Q. How many did you see, about, in his possession? A. I don't remember the collection much in detail; I remember several of the principal pieces, and medals I couldn't say anything about; there is quite a bit of the stuff, however, that I remember.

Q. Have you had occasion to ascertain the market value of Indian pipes? A. Yes, sir.

Q. Did you see any Indian pipes that belonged to Mr. Deslions, when you went there? A. Yes, sir.

Q. How many, about? A. I couldn't tell you that. 5448

Q. Can't you form any opinion from your recollection whether he had a large or small number? A. Well, the pipes were a little in excess of proportionate to his other collection as I remember; I couldn't give the number; perhaps two dozen, possibly three.

Q. He has sworn, in his examination at page 107, that he had 300 pipes; did you see any such number as that? A. No, sir, I am positive on that.

Q. The pipes that you did see, did you at that time appraise them? A. I run over the whole collection——

Mr. Benedict: Just answer the question please. 5449

A. (Continued.) Not, as I might say, separately.

Q. Mr. Deslions has sworn that in the collection which he had there were 300 pipes, and that he had over $3,000 worth of pipes. Can you state, from what you saw there, how that figure would approximate to the value of what you saw, in pipes?

Objected to. Allowed.

A. Somewhere between fifteen and thirty times too large.

5450 Q. Did you see, at Mr. Deslions', a collection of other pipes collected from China, Japan, Corea, India, Turkey, Greece, France, Germany, Austria and England? A. No, sir.

Q. Did Mr. Deslions say anything about having such a collection as that at the time? A. No, sir.

Q. Among all the pipes that you saw did Mr. Deslions call your attention to any particular pipe as having any special value? A. Not that I remember.

Q. Did Mr. Deslions say anything to you at that time about one of the pipes being an Ashantee pipe? A. He might have—I couldn't remember the con-
5451 versation; only in regard to a few things; it is so long ago.

Q. Have you had occasion, during your career as a dealer or collector, to ascertain the value of Indian arrow heads? A. Yes, sir.

Q. Mr. Deslions has sworn that he had a collection of arrow heads from Oregon, small points, made of obsidian and other stone, about five or six hundred. Did you see those at his place, or did you see any arrow heads? A. I couldn't say.

Q. What are such arrow heads as I have described fairly worth in the market? A. Just what you can get.

5452 Q. Mr. Deslions has sworn that five or six hundred arrow heads that he had were worth five or six hundred dollars; can you state from your experience whether that is a fair valuation, a dollar apiece? A. That would depend on the arrow heads.

Q. How would a person arrive at the valuation of the different arrow heads? A. The shape, style, size, the degree of fineness in the chipping, the scarcity of certain types, what might be called unique types, and then the general run.

Q. Take the general run; are arrow heads a

stock article in the market in Indian curios? A. 5453
Yes.

Q. What does the ordinary run of such articles bring? A. Well, there is such a vast range that one couldn't answer that question in a general way.

Q. What is the lowest price at which any of them sell? A. Half a cent.

Q. And what is the highest that you know of on the market? A. Well, I sold the largest part of mine at fifty cents and a dollar a dozen; I have received higher prices in a few instances.

Q. What is the highest price you remember having known to be paid for an Indian arrow head? A. I have seen them marked at all kinds of prices, but 5454
I have never seen them sold to exceed $10. There are arrow heads with points, extremely long points, but they are not—they are classed more as spear heads. When they go beyond $2.50 they run under another class; those are extremely valuable specimens; of course there are specimens that have brought fancy prices I have been told; I have never been able to get them.

Q. Did you see any Indian dolls in Mr. Deslions' collection in Washington square?

Mr. Benedict objects, as leading. Allowed.

A. I can't say whether I did or not.

5455

Q. Are you acquainted with the value of Indian dolls? A. Yes, sir.

Q. What are Indian dolls? A. They are made of buckskin with a little horse hair on the back and some eyes marked on with some sort of pigment, possibly their paint that they make of roots and minerals boiled together; they will string a few beads on them, and they are toys that the children play with the same as our children play with dolls here.

5456 Q. They have hands and feet, do they? A. Well, they might be called that; they are quite crude.

Q. Are they of different sizes or do they all average about the same size? A. No, they run different sizes.

Q. How as to value; do they vary very much? A. Well, all this stuff varies.

Q. What is the average market value of Indian dolls, such as they usually offer for sale? A. Well, my answer would have to be off-hand; I might say a dollar and a half to five, with an average of two and a half.

Q. Have you ever had occasion to, or have you
5457 ever observed that any of these dolls had any distinctive character as being portraits of any person?

Objected to. Allowed.

A. I never saw anything of the kind in all the dolls that I have handled; they couldn't make a portrait of any person without naming it, and passing it for that.

Q. Did you see in Mr. Deslions' collection, or did he call your attention to any Aztec masks? A. No, not that I remember of; I am quite certain of that.

Q. Do you know anything of the value of that class of articles? A. No, I think not; I don't re-
5458 member of ever having seen one.

Q. Did you see at that time, in Mr. Deslions' collection, any Mexican buckskin suits? A. I can't say.

Q. Do you know anything of the value of Mexican buckskin suits? A. Yes, sir.

Q. What are they ordinarily worth? A. Well, I have had two or three suits in my possession; I bought them from $6 to $10.

Q. You bought them at that; what is their mar-

ket value now, if you had them to sell? A. I think 5459
I got about double.

Q. Do you know anything of the value of Mexican sombreros? A. Yes, sir.

Q. What are they ordinarily worth on the market? A. A dollar and a half to five.

Q. Have you seen many of them? A. I have seen them on almost all the inhabitants for months where I traveled; I have seen a great many.

Q. Mr. Deslions has testified that he paid $50 for one of his Mexican sombreros. Did you ever see a Mexican sombrero that was worth that amount? A. No.

Q. Did you see any Mexican sombreros in Mr. 5460
Deslions' collection? A. I don't recall.

Q. Do you know anything of the market value of Mexican spurs? A. Yes, sir.

Q. Supposing they were made of silver, weighing about a pound; what would they be worth? A. I have never seen any of those; I have heard the stories about them, but I have never seen any solid silver spurs; I have seen them inlaid with silver; so I couldn't answer that.

Q. Take the inferior article, inlaid with silver, what would that be worth?

Objected to as immaterial.

A. They might run as high as $25. I never heard 5461
of anything going any higher, that I remember.

Q. Do you know the value of Mexican iron spurs? A. Yes.

Q. Supposing they were large ones, elaborately carved, what would they be worth? A. Twenty-five cents to possibly $3.50; those things vary so it is impossible to state an exact figure; but that would be about the range of prices.

Q. Mexican bridles; are you acquainted with the value of them? A. Yes, sir.

5462 Q. What is the ordinary Mexican bridle worth? A. Well, ordinarily good bridles as you would use largely would be worth $1.75 to $2.50.

Q. Does it make any difference whether it has been used or whether it is new what the value of it is? A. Yes, it would make a difference with a Mexican bridle; it would be worth less after it was used than before.

Q. Supposing these were new, what would they be worth? A. The price that I have mentioned.

Q. Mexican saddles; do you know what the value of Mexican saddles is? A. Yes, sir.

Q. Did you ever see any saddles inlaid with sil-
5163 ver? A. No, sir, I have heard of them, but I have never seen them.

Q. Do you know anything about the value of them, have you had occasion to inquire into the value of them? A. Only what I have heard of.

Q. Have you heard of them in the course of your business? A. I have heard it talked of in connection with—in talking about these things a man would say, Oh, I have seen a bridle worth so much, or something like that.

Q. Where is this inlaying done, in what part of the saddle? A. I have never seen any inlaid saddle, with silver.

Q. What is the value of the ordinary Mexican
5464 saddle? A. The ordinary Mexican saddle is $2.50 to $15.

Q. Have you ever seen or had occasion to handle or fix a price upon Mexican leather trunks? A. Yes, sir.

Q. What is there distinctive about a Mexican leather trunk; how does it differ from any other leather trunk? A. Well the outside is covered with interlacings of leather.

Q. Some of them more elaborately worked than others? A. Yes, sir.

Q. What is the average price of Mexican leather 5465
trunks, or what is the range of price? A. There isn't enough of them to say an average price; I have had two of them of the old style Mexican trunks; I think I gave $6 for one, in that neighborhood, and $8 or $10 for the other, as I remember.

Q. Were either of them elaborately or handsomely worked? A. As nice as I have ever seen them.

Q. Did you see any of these Mexican trunks, spurs, sombreros or saddles at Mr. Deslions' when you were there? A. Nothing out of the ordinary, that I would remember.

Q. Do you know anything of the value of Peru- 5466
vian mummies? A. Something, not so much as I do of these other things.

Q. Have you ever had occasion to ascertain or inquire the value of them? A. Yes; through George C. Dorsey, of Chicago; the Field Columbian Museum of Chicago; he was there at the time; it was during the World's Fair; he had a large collection of mummies there.

Q. What was the value he put upon them, do you know?

Objected to.

The Commissioner: He has not shown himself 5467
qualified to testify as to the value.

Mr. Haldane: I ask what was the advertised value of that collection.

Objection sustained.

Q. Was any price advertised or put upon those articles?

Objected to as immaterial and incompetent.

Objection sustained.

5468 Q. Did you ever inquire as to any other Peruvian mummies than those that were in that exhibition?

Objected to as immaterial.

A. I think the Peruvian mummies—I don't know enough about them to quarrel over.

Q. Did you ever make any further inquiry about Peruvian mummies except that one lot? A. Yes, I have inquired about them. At one time I had in mind to go and get a collection of them.

The rest of the answer, on motion is stricken out.

5469 Q. Did you inquire among dealers or persons who handled them? A. A collector.

Q. More than one? A. Yes.

Q. How many? A. Two or three; perhaps more; I looked into it enough so that I gave up the project.

Q. What did you ascertain was the ordinary price of Peruvian mummies, after making those inquiries of the persons that were handling them?

Objected to as incompetent.

The Commissioner: I don't think he is qualified to testify as to the value of such things.

5470 Q. Have you ever had occasion to ascertain the market value of Peruvian heads, whatever they may be; do you know what Peruvian heads are? A. Do you mean the shrunken heads?

Q. I don't know. The claimant says they are Peruvian heads. A. There is shrunken heads and there is skulls that are sometimes designated as heads. I wouldn't know which were referred to.

Q. Let us take both kinds. Do you know what the market value of either or both kinds of Peruvian heads is? A. I don't think I would be competent to give it.

Q. I can tell whether you are competent or not 5471
if you will tell what experience you have had in handling them or seeing them handled? A. It is all summed up in one answer; I looked into the Peruvian stuff until I concluded to let it alone.

Q. But you did make inquiries for the purpose of investing in that class of goods, did you? A. Yes, sir.

Q. What did you ascertain, from your inquiries, to be the value of Peruvian heads as to the different kinds that you have specified?

Objected to as incompetent. Objection sustained.

5472

Q. The claimant has testified that these Peruvian heads, five of them, were worth $125 to $150 apiece. How does that price compare with the price that you ascertained they were worth when you were making your inquiries?

Objected to as incompetent. Objection sustained.

Q. Do you know the ordinary value of wooden Indian masks? A. No.

Q. What are wooden Indian masks? A. I don't think I know what they are; there are certain masks that they use in their ceremonials, but I 5473
never heard of wooden masks; I don't think I could give you any information on the masks.

Q. What I want to know is, in the course of your experience as a collector and dealer in Indian goods for the last fifteen or seventeen years, have you ever come across any wooden Indian masks? A. No, never had one nor never saw one.

Q. You never heard of one? A. I don't think I ever did before.

Q. Did you ever see any Alaskan masks? A. Yes.

Q. Have you handled them or priced them or

5474 familiarized yourself with the value of them? A. No.

Q. What are they made of? A. Wood, as far as I remember; I couldn't give you any information on the Alaskan masks.

Q. Indian rattles; what about them; do you know anything about them? A. Yes, sir.

Q. How do they run in price, are they uniform or is there a great range of prices for them?

Objected to on the ground that the witness is not qualified as an expert.

Q. Have you handled or bought or sold Indian
5475 rattles? A. Yes, sir.

Q. During the period of time that you have specified? A. In all these sales I have always had them.

Q. Now I will ask you, do they run uniformly in price, or is there a great range of values? A. Quite uniform.

Q. And what is the market value? A. Fifty cents to $2.50.

Q. Have you ever handled or bought or sold any Alaskan rattles? A. No, sir.

Q. Have you ever seen any? A. Not that I remember.

Q. Have you ever handled or bought or sold Indian drums? A. Yes, sir.

5476 Q. Ceremonial drums? A. So-called.

Q. Why do you say "so-called"? Is there no way to tell whether they are ceremonial drums or not? A. Well, the ceremonial drums are seldom ever parted with. I have never owned a positively ceremonial drum. They make in the vicinity of Santa Fe—the Pueblo Indians make drums that range from four to six dollars, and are passed off on tourists as a rule for ceremonial drums.

Q. How could you tell, if you wanted to buy a real ceremonial drum here in New York, how could

I tell whether it was the genuine ceremonial drum, 5477
actually used by Indians, or whether it was an imitation? A. I could tell by having seen them in the Pueblos and repeatedly tried to buy them. I think I have tried—every known way I have had recourse to to get a ceremonial drum, and failed utterly.

Q. You didn't quite understand my question. What I mean to say is this: supposing I wanted to buy a ceremonial drum now in New York; how could I tell whether it was a real ceremonial drum that had ever been used by the Indians in their ceremonials, or whether it was an imitation article? A. You couldn't tell; you would have to have a 5478
knowledge of these drums, having seen them out there, to be able to tell the difference that exists.

Q. What is the ordinary ceremonial drum that is offered to the public worth?

Objected to.

A. They are not offered to the public.

Q. What are these drums, that are on the market as ceremonial drums, worth?

Objected to as incompetent. Allowed.

A. From $2 to $10. They might pass them off in that way; from $2 to $6 as I remember, about.

Q. You know the difference between the spurious 5479
article and the real, do you? A. Yes, sir.

Q. Have you ever known one of the real ceremonial drums to be priced, a price to be put upon it? A. Never.

Q. Are you acquainted or have you had occasion to familiarize yourself with the value of Indian war clubs made of stone? A. Yes, sir.

Q. Do those run uniformly in value, or is there a great range of prices for them? A. There is a great range in all of this stuff.

5480 Q. Indian clubs I am speaking about now. A. There is quite a range of value.

Q. Depending upon what? A. Historical; authenticated history.

Q. What is the ordinary price or value of Indian war clubs made of stone that have no history particularly; just the ordinary club? A. We buy them at $15 a dozen and sell them at $2.50 to $5 apiece. Once in a while one will be a particularly fine piece of work or stone and one might get more for them I have received more, I think, for three clubs.

Q. Have you handled, bought or sold or familiarized yourself with the value of tomahawks, both

5481 stone and steel? A. Yes.

Q. How is it about that class of goods? Does the price of them run uniformly, or is there a great range in price? A. There is a vast range of price in the stone.

Q. Depending upon what? A. Workmanship, size, quality of stone, the style of the grooves.

Q. Does the history of the tomahawk cut any figure in fixing a value upon it, if it has a history? A. From an ethnological point the history is the greatest consideration.

Q. How is it when it goes upon the market? A. When they go on the market they are a piece of

5482 rock, and the beauty and workmanship and size would be, well, the same that I spoke of before, without the historical part of it.

Q. Take stone tomahawks and the ordinary stone tomahawk without any particular history; how do the prices run, the minimum and maximum prices?

Mr. Benedict: He hasn't handled any of them.

Q. Didn't you say you had handled and bought and sold these goods? A. I have handled hundreds of them; they range from twenty-five cents to two dollars and a half; that is, the bulk of them.

Q. How about the steel ones? A. The steel—I 5483
don't think I have ever had but one old steel tomahawk.

Q. They are a more modern article, aren't they? A. Well, the most that I have ever seen are worked up; they are gotten up for sale; for mercantile purposes.

Q. Not Indian goods at all? A. A steel tomahawk never was an Indian article; it is made by the white man and traded to them and then bought back.

Q. Have you ever bought or sold or had occasion to familiarize yourself with the value of Indian shields? A. Yes, sir. 5484

Q. Are there different grades of Indian shields? A. Yes.

Q. Describe the various grades. A. Well, there is what we term the commercial stuff generally bought of Jake Gold, of Santa Fe, and sold to tourists, that runs from fifty cents to a dollar and a half out there; some of it might go here as high as six.

Q. Is there another class of shields made of Buffalo hide? A. Yes, sir.

Q. Are there many of those on the market? A. I never owned but one, and I sold that at auction in Kansas City. 5485

Q. Have you priced them at different times? A. Yes, sir.

Q. Have you known of their being bought and sold? A. Not to any extent.

Q. What does the Buffalo hide shield sell for usually? A. I haven't seen enough sold to give a value; one I sold for $2.50 at auction.

Q. Did you see any Indian shields in Mr. Deslions' collection at Washington square? A. I can't remember—yes, I do remember; I remember some

5486 of the small commercial shields. I joked about them; I remember the circumstance.

Q. What did you say about them? A. Well, I couldn't remember the exact conversation, but I spoke of it.

Q. He has testified that in the cases of goods which he says were on the steamship that went down, he had forty of these Buffalo hide shields. How many of any kind did you see there? A. Possibly four or five; not to exceed half a dozen.

Q. He has testified that these forty Buffalo hide shields he had were worth from $100 to $150 apiece. How does that price compare with any sales that

5487 you know of Buffalo shields?

Objected to.

Q. What did you get for the one you sold? A. $2.50.

Q. Was that a Buffalo hide or a commercial hide? A. Buffalo hide; it was sold, however, at auction.

Q. Have you ever bought or sold or familiarized yourself with the price of Indian war bonnets trimmed with eagle feathers? A. Yes, sir.

Q. Are they very scarce, or are they easily obtainable? A. Quite easily obtainable at the present

5488 time.

Q. What is the value of the ordinary war bonnet with eagle feathers? A. Which value do you want?

Q. The three values, if you say there are several; the market value I want, such as a person would have to pay if he went into your place and you had one for sale? A. $15—well, I would range the prices from $6 to $35.

Q. Depending upon what? A. The feathers and the workmanship.

Q. Mr. Deslions has testified that in his collection he had forty of these, one of which was worth

$300, and that the forty were worth from $2,500 to 5489
$3,000. How many bonnets did you see in his collection when you went there? A. I couldn't say; nothing to impress me so that I would remember; I never heard of such a collection anywhere.

Q. Do you know of other collections? A. Yes, sir.

Q. How many do you suppose, about? A. I couldn't say; a great many.

Q. Do you know of any collection that has got forty war bonnets in it? A. I never heard of such a thing.

Q. Have you handled, bought or sold or familiarized yourself during the period you have men- 5490
tioned, with the market value of buckskin Indian war shirts? A. Yes, sir.

Q. Are they usually embroidered, and if so what with? A. Well, I shouldn't call them embroidered; they are worked with beads as a rule; if they embroidered war shirts—there is no such thing that I know of, among the real Indian stuff.

Q. Mr. Deslions has testified that these war shirts were embroidered with porcupine quills? A Well, if you call the working—I should call them worked with porcupine; he might call it properly embroidered, although embroidering, as I understand it, is fine work, whereas the porcupine quill 5491
work would be—I should call it under a different heading. They are worked with porcupine, however, many of them.

Q. Are they usually trimmed with scalp locks? A. No, sir.

Q. Mr. Deslions has testified that his were worked with scalp locks and embroidered with scalp locks. Do you know how a buckskin war shirt could be embroidered with scalp locks? A. Never.

Q. Is there ever any such thing done? A. Never.

5492 Q. Did you see any buckskin war shirts in Mr. Deslions' collection? A. I saw war shirts; or what is generally termed war shirts; buckskin shirts with the usual beading or usual working; I should think, however, in a general way.

Q. What is the average war shirt, such as you saw there, worth? A. You couldn't cast an average.

Q. What is the minimum or maximum price that you know of? A. He had one very fine piece; I had one similar to the piece at one time, I shouldn't call it trimmed with scalp locks, however, but tufts of hair; I have never seen a war shirt trimmed with
5493 scalp locks; scalp locks are too scarce for any such purpose. They don't drift into the market to be worked into shirts, at least, what I have handled of them.

Q. Did he have any scalp locks on this one that you saw, or were they tufts of hair? A. I certainly say no scalp locks on any buckskin shirt, because I should have remembered that by all means.

Q. I ask you to give the extreme range of prices for that class of goods? A. The highest price that I ever got for one was $75. That was trimmed with locks of hair; as they are generally termed, scalp locks, that trimming; then the next highest
5494 price I think I got $35, between thirty-five and say thirty-six; with the one exception.

Q. And that was $75? A. $75.

Q. Mr. Deslions has testified that in his collection he had forty of these war shirts worth $100 and more apiece; did you see any such collection as that? A. No, sir.

Q. Did you see any such collection of war shirts as that? A. I never saw such a collection together on earth anywhere.

Q. Have you ever bought or sold or had occasion

to familiarize yourself with the value of Indian 5495
ghost shirts? A. No.

Q. Have you ever seen any of them? A. Yes.

Q. You never have handled them? A. I classed them as frauds and cut them out; I wouldn't have them in the collection.

Q. What do they purport to be, what are they offered to the public as?

Objected to as immaterial.

A. Ghost shirts.

Q. What are they called ghost shirts for? A. Some ceremony they have had out there; they are muslin outfits; some of them might have been used 5496
for that purpose; but the general appearance was such that I didn't like to handle them; I always liked to keep my collection as clean as possible.

Q. Mr. Deslions has testified that he had twenty of them, worth $20 to $35 apiece; did you see any of them at his place? A. Not that I remember.

Q. Have you handled, bought or sold or had occasion to ascertain the ordinary value of scalps?

Objected to as hearsay. Allowed.

A. Yes.

Q. What is the ordinary scalp worth? 5497

Objected to. Objection sustained.

Q. Have you dealt in Indian leggings? A. Yes, sir.

Q. During all these years? A. There has seldom been a time but what I have had leggings; I have sold hundreds of pairs.

Q. What are the ordinary leggings worth, a pair? A. Squaw leggings would run from $1.25 to $6, with occasionally fine specimens running higher.

Q. Mr. Deslions has testified that he had forty

pairs of these in his collection at Washington square. Did you see any such number as that? A. No, sir.

Q. About how many did you see, if you remember? A. Oh, there might have been a dozen pairs; I wouldn't say it as a dozen, but it was only proportionate to the other part of the collection, as I remember.

Q. During the fifteen years that you have been in this business have you dealt in Indian moccasins? A. Yes, sir.

Q. Do they run uniformly in price, or is there a great range of price? A. Quite uniform.

Q. What is the ordinary market price for a pair of moccasins? A. Well, the finest beaded moccasins that are generally sold we could buy at $18 a dozen; you could buy a poorer grade for $15 a dozen; the finest fancy moccasins, beaded top and bottom come at $24 a dozen; but there isn't enough of those to hardly be quoted as dozens; they might range a little higher; I think I have seen them sold on exceptional occasions as high as $6 and perhaps $8.

Q. Mr. Deslions has testified that he had 200 or 300 pairs; did you see any moccasins in his collection, and if so what number compares with the number he gives? A. The same question, or the same answer would apply to the most of these things, I say, as regards his particular collection; as values, I can classify the values on all of this stuff; all of the southwestern Indians have been considered authority on values, but as for this particular collection, I estimated it——

Mr. Benedict: Wait a minute.

Q. How would such a number or quantity of moccasins be considered as part of a collection, 250 or 300? A. It would be a pretty heavy stock, even

for a commercial collection; it would be entirely 5501
out of proportion for a personal collection.

Q. Mr. Deslions has testified that all of these 250 or 300 pairs, on the average were worth $5 or $6 a pair; did you see any of those $5 or $6 moccasins at his place? A. I never saw anything like that anywhere.

Q. You never saw any such collection of moccasins? A. No, not together.

Q. Indian lances; have you dealt in those? A. To some extent. I would like to qualify my statement as to the moccasins; I have seen that number together.

Q. But I mean moccasins worth $5 or $6 a pair. 5502
A. Oh, no, no.

Q. Did you ever hear of such a collection of valuable moccasins as that? A. No, sir.

Q. Lances with feathers and scalps attached? A. No.

Q. Did you ever see any? A. No.

Q. You have seen Indian lances? A. Yes, sir; but when I get that combination, I never run across them anywhere.

Q. Dancing sticks; have you dealt in them? A. There is a dancing stick I call the corn lance stick; there is a few eagle feathers attached to it, and different colors; I used to buy a few of them. 5503

Q. What were they worth? A. Fifty cents to $1.25 apiece.

Q. Mr. Deslions has testified that he had two of them, worth on an average $150 to $100 for the two; did you see there a dancing stick at any such price as that? A. No. sir.

Q. During the time that you have been in business have you dealt in dancing belts? A. I have dealt in belts; I have sold a great many of them one time and another.

Q. What is a dancing belt, as distinguished from

5504 any other kind of belt? A. If I might be excused for saying a few——

Mr. Benedict: Answer the question.

Q. What is a dancing belt? A. I don't know.

Q. You never heard of such an article? A. Not classed that way; there is the beaded belts, and to answer these questions intelligently requires some little explanation. The same thing is given a different name by different people and different collectors.

Q. Let me help you out a little; these belts that Mr. Deslions had were trimmed with eagle feathers
5505 and porcupine embroidery and some feathers embroidered with porcupine; what is the proper name for them, if not dancing belts? A. I would call them belts.

Q. Such belts as I have described to you; what were they worth; what would they be worth?

By Mr. Benedict:

Q. Did you ever deal in any such? A. Oh, yes; you see that particular belt is out of the question; I don't know how many eagle feathers, and I don't know the quality of the porcupine.

5506 By Mr. Haldane:

Q. Mr. Deslions says he had twenty belts of that kind. Did you ever hear of a collection of twenty belts of that kind, all embroidered with porcupine and embroidered with feathers?

Mr. Benedict: He said he didn't know of them.

A. I know that kind of a belt; I can tell any of this stuff if it is described to me; it is worth about $1.50 to $10. Understand I am giving the range of values, and not designating that particular belt, because

one Indian might string on a batch of eagle feath- 5507
ers, and immediately that attaches value. I am only giving the range of values; as a rule there is only two or three feathers.

Q. Did you see any such number of those belts at Mr. Deslions' when you were at Washington square, twenty belts of that character? A. Oh, no, no.

Q. Indian tobacco pouches, have you dealt in them? A. Yes.

Q. Are they scarce or easily obtainable? A. They are getting scarce.

Q. How was it in the ten or twelve years pre-
ceding 1898? A. Much more common than at pres- 5508
ent, or up to a year ago.

Q. Are they sometimes embroidered with porcupine quills or beads? A. Yes.

Q. Are they made of buckskin usually? A. Yes.

Q. That class of tobacco pouches, what were they worth? A. They range from $1.25 to $7.50 about the highest price I think; I did pay once in one particular instance, I think I gave $10 or possibly $12, one particular fancy pouch. But that is the exception out of hundreds and hundreds of them.

Q. Mr. Deslions has testified that he had in his collection 80 tobacco pouches; do you remember how that compares with your recollection of what 5509
you saw? A. I would put it nearer eighteen than eighty.

Q. He has also testified that these 80 tobacco pouches which he had were all selected articles averaging $20 to $25 apiece; did you see any tobacco pouches there of any such value as that? A. Not that I remember.

Q. Did he call your attention to any special characteristics of his tobacco pouches? A. Nothing that I remember.

5510 Q. Have you bought and sold or dealt in Indian game bags? A. Yes.

Q. What is a game bag? A. It is a pouch—take a book and fix it like that (indicating) of buckskin with shoulder straps over, and then it is embroidered with more or less beading. I use this book to illustrate, because it is very hard to describe them.

Q. What is the usual price for them? A. $10 to $15.

Q. Mr. Deslions has testified that he had twenty of these game bags; did you see any such quantity as that at his place? A. I have no remembrance of seeing anything to approach that quantity.

5511 Q. And that they were worth something like $25 apiece; did you see any game bags of any such value as that? A. No, sir, I have never seen any collection of any such quantity, with the price attached.

Q. Have you dealt in Indian saddle bags? A. Yes, sir.

Q. What are they? Something like the game bags? A. On that order, only the saddle bags are double. There are two classes of game bags; I don't know whether I am to give information—there is so much explanation required in this stuff to make a comprehensive answer.

Q. If you want to say anything further about the game bags you can do it now. A. There is what

5512 is offered as the Chippewa game bag, that is worked on cloth, and that is the style of game bag that I gave the values of; now the game bag used in the western tribes would be in the nature of buckskin, and a much cheaper article. They don't use them to—it would run into the saddle bag if once it was a game bag. In the northwest they have pockets that go on each side of the saddle. Some people might class those as game bags, but I should not, because there is no shoulder strap and to make a game bag out of it I would want a strap.

Q. But the saddle bags are usually sold in pairs? 5513
A. There is a separate one and a double one.

Q. What are they worth, single ones and double ones? A. The double-beaded bag would range from $6 to $15.

Q. And the single? A. I am giving the lowest, and the outside prices through the general sales; I think I have sold one saddle bag, I think I got as high as $35 for it, but is is exceptional.

Q. Now the single ones. A. The single ones run from $2.50 to $6 and $8 possibly.

Q. Mr. Deslions has testified that he had ten or twelve of these saddle bags and that they were worth, using his own language "$600, or something 5514
like that." Did you see any such collection of saddle bags as that at his place? A. I never saw it anywhere; I have seen them separately, but not together; I never heard of such values.

Q. Have you dealt in Indian tents? A. To some extent.

Q. Tepees he calls them. A. It would depend on what a tepee is.

Q. Tell me how you are going to put a value on an Indian tepee? A. There is an Indian tepee made, a little miniature tepee made to sell to tourists, a trade affair, that ranges in value from, say $2.50 to $4.50. That is made of buckskin or sheep- 5515
skin; they use sheepskin in those frequently.

Q. But Mr. Deslions testifies that he had two Indian tents. Have you dealt in them? Not the miniature tents? A. I have bought—I don't think I quite understand; if he means the tepees——

Q. I will read you his testimony:

"Q. Did you have any tents? A. Yes, sir, two tents.

"Q. Indian tents? A. Yes, sir.

"Q. What is the name of those in Indian? A. They call them tepees."

5516 So I assume he meant full-size tents. Have you dealt in them A. There is not enough of those sold to be called being dealt in; that price could vary indefinitely.

Q. Have you known any of them to be bought and sold? A. Except as gathered into museums.

Q. Have you known them bought or sold for museum collections? A. Yes; it is all owing to the size; there is two of these things; one is the full-fledged, full-sized tepee—tepee covers it all, under which they live.

Q. What is the difference between a tent and a tepee? A. Why nothing.

5517 Q. (Handing witness photograph.) Look at this paper, "Deslions' Exhibit No. 5." These are supposed to be the two tents referred to in the claimant's testimony I assume. Have you known of any purchases or sales of that class of Indian tents? A. May I ask what they are made of?

Mr. Benedict: They are made of cloth. A. They have the appearance of being made of cloth; I have seen the tents bought and sold; this isn't what I had in mind at all.

Q. What is that class of tents, such as you have a picture of in front of you, worth? A. $10 or $15, and might run up to $25, according to the painting

5518 that is on the outside.

Adjourned to Tuesday, March 24th at two P. M.

New York, March 24, 1903.

Adjourned to March 26, 1903, at two P. M.

NEW YORK, March 26, 1903. 5519

Met pursuant to adjournment.

Present—THE COMMISSIONER;
Mr. BENEDICT;
Mr. HALDANE.

CHAUNCEY W. RIGGS, examination continued:

By Mr. Haldane:

Q. When you saw Mr. Deslions' collection in Washington Square did you see any scalps there? 5520
A. Yes, sir.

Q. Do you remember how many? A. Two.

Q. Describe those scalps, the condition of them, etc.? A. They were claimed to be scalps; I raised the question of their genuineness; we talked it over some; I said they were not genuine and Mr. Deslions said he thought they were.

Q. What was their condition? A. Well, one in particular had the appearance of being freshly taken; my judgment of it was that he got it from some Indian recently; it was Indian hair; it could not be classed with the scalps as they are known among curios. 5521

Q. How about the other one? A. The other I don't remember so particularly; the larger of the two was so large and so fresh that I can really almost see it yet; it seems to me as if I can when I think of it. The smaller scalp—yes, I do remember that the question was raised whether it was Indian hair or horse hair.

Q. Did you have a discussion with Mr. Deslions about that? A. Yes.

Q. What did he say about these scalps, where he got them, or did he give any history of them?

5522 A. He never gave me any history of anything. I don't remember his saying any more about them, except that he thought they were genuine. I don't remember much more of the conversation. I know it was discussed pro and con.

Q. Have you, in the course of your business as a dealer in this class of goods had occasion to buy, sell or handle Indian squaw dresses? A. Yes, sir.

Q. Are they or are they not a class of goods that is generally handled by dealers? A. Well, they are generally handled; there are quite rare specimens, and you will find perhaps one, two, or three in a very large collection, or a very large stock of

5523 goods; seldom more than that; two or three.

Q. Do you remember seeing any squaw dresses in Mr. Deslions' collection? A. Yes, sir.

Q. Do you remember how many? A. I couldn't tell you how many. There might have been—there was one in particular, a blue one which I remember; it was an old dress, it was blue beaded. It was an old specimen and a very fine one.

Q. What was that worth?

Objected to on the ground that the witness is not shown able to speak of values. Objection overruled.

5524 A. The specimen, when you could find the proper customer, would bring $75.

Q. How about the others that you saw? A. They were of considerable less value; I am quite positive there wasn't to exceed three.

Q. What should you say the ordinary value of the others was? A. I don't remember the others sufficiently to place values upon them.

Q. Mr. Deslions has testified that he had one Indian squaw dress in his collection at Washington Square, for which he had been offered $500, and for which he refused that offer. In the course of your

experience as a dealer for the last fifteen or seven- 5525
teen years, whichever it was you testified to, have you known of any such price as that being asked for or paid for an Indian squaw dress?

Objected to as immaterial and incompetent. Objection overruled.

A. No, sir.

Q. In the course of your business as a dealer in this class of goods have you had occasion to buy, sell or ascertain the value of Indian boys' dresses? A. Yes, sir.

Q. Are they a rare article, or are they easily to be obtained? A. They are very rare. 5526

Q. Did you see any of those in Mr. Deslions' collection? A. Yes, sir.

Q. Do you remember how many? A. One.

Q. Can you describe that? A. No, I couldn't describe it, but it was a very fine little suit.

Q. What was it worth?

Objected to that the witness is not shown to be competent. Objection overruled.

A. Well, I should ask $50 for it if I had it, as I remember it. That is the general impression. These finer specimens always leave an impress on the mind, or almost always.

Q. In the course of your experience as a dealer in 5527
this class of goods, during the period named, have you had occasion to buy or sell or do you know of any sales or purchases of the suits of Indian chiefs? A. Well, buckskin shirts, the leggings and other goods of that style might be classed together and called a suit of Indian chief's.

Q. Speaking from your experience what different articles of apparel constitute a suit, an Indian chief's suit? A. A buckskin shirt, a pair of leggings, possibly a feather head-dress; they very sel-

5528 dom go together. The pieces are very seldom held together as suits; they are sold more as shirts or leggings.

Q. I call your attention to Mr. Deslions' description as found upon page 119 of the record, of a suit which he claims to have had there, as follows: "The war shirt was very elaborately trimmed with porcupine and ornamented with scalp locks and leggings also to match, and moccasins also, and there was a big war bonnet and the feathers were all embroidered with porcupine and trimmed with ermine and some silver ornaments." Do you remember seeing a suit of that kind? A. No, sir, I think I

5529 would remember it if I did.

Q. Did you see any suits of Indian chief's at that time in his collection? A. Not that I remember, no.

Q. What would such a suit as I have described to you be worth?

Objected to as no competency is shown on the part of the witness to answer. Objection overruled.

A. One would have to have more details to place a value on it. A suit described as that is described would class among the very finest specimens. The

5530 war shirt figured as the finest kind of a specimen, the very top figure I should place as $75; I have never, however, seen a shirt trimmed with scalp locks. They are trimmed with tufts of hair; they are erroneously called scalp locks.

Q. What would you understand by "leggings to match"; have you ever seen any leggings trimmed with scalp locks? A. No, sir.

Q. What would a big war bonnet with feathers embroidered with porcupine and trimmed with ermine, and silver ornaments be worth? A. There is quite a range of value there.

Q. Did you ever see a war bonnet that had feath- 5531
ers embroidered with porcupine and trimmed with ermine and that had silver ornaments? A. That description is given somewhat general. The feathers might be wrapped with red flannel and then porcupine called embroidery by Mr. Deslions, I call it working, it goes under different names, as I said before—that might be about the feathers; then the ermine could be draped down the side.

Q. And the silver ornaments, where could they be placed? A. Silver ornaments, I have never seen silver ornaments to any extent on war bonnets. They sometimes have a few small bells on the side, silver ornaments, as far as I have seen them 5532
amount to very little on a head dress.

Q. What would such a war bonnet as that be worth as this description indicates?

Same objection and ruling.

A. I would have to say again, it would be hard to answer from that description. It might be worth —how many feathers does it say?

Q. It doesn't say. A. If it was simply a standing head-dress, that is to be worn in councils or some of their ceremonies, there would be probably less feathers; if it was to be worn in riding a pony, it might be a very long head-dress and it could 5533
range anywhere from $15 to $150. I should say $150 would be an extreme figure. $15, however, would be a very small figure. The best price I ever got for a head-dress was $65.

Q. When you saw Mr. Deslions in Washington Square at the time you looked over his collection did he say anything to you about how many complete Indian chiefs' suits he had? A. No.

Q. He has testified on page 120 of the record that he had forty complete Indian chief's suits. In that connection I ask you again how many trunks did

5534 he say he had, besides what he had on the wall? A. He said he had two trunks or cases, or boxes; I don't remember which.

Q. Have you seen numerous collections of this class of goods? A. Oh, yes.

Q. I think you testified the other day that you had? A. Yes, sir, a great many.

Q. Do you know of any collection in the United States that has got forty complete suits of Indian chiefs in it? A. I don't know that many in all the museums and collections combined. I don't think there is in the whole combined.

Q. Did you notice more than one complete suit
5535 of Indian chief's that he had there? A. I didn't notice any Indian chief's suit. In fact I never class them that way.

Q. Did he exhibit to you at that time any complete suits such as I have given you a description of? A. Not that I have any rememberance of.

Q. In the course of your dealings in these goods during the period specified have you had occasion to buy, sell or know of the purchase and sale of cow boy suits? A. Well, cow boy apparel, as we call them leather chaps——

Q. I will break in there. What is a cowboy suit, as you understand it? What different articles does
5536 it consist of? A. If it was a buckskin suit it would consist of a shirt and leggings and occasionally they have them made of leather, they might have a full suit made of buckskin.

Q. When you say leggings do you mean trousers? A. No, there is what we call chaps. I don't know that I can spell the word; we say chaps out there. It is a leather legging that comes up about to the hips; it is to save the clothing in riding through the brush.

Q. Mr. Deslions has testified that he had some of these and one of them had silver trimming.

What would they be worth the ordinary cowboy 5537
suit, and the ones with silver trimming?

Same objection and ruling.

A. Well, it might range from $25 to $50.

Q. What is a girl cowboy suit, do you know? A. I don't think I do.

Q. Did you ever see any, or know of them being on the market? A. Well, yes—I am positive I do now.

Q. What is a girl's cowboy suit? A. Well, it would consist of a short dress, a short skirt a little below the knees, of buckskin with some beading or without. There might be a buckskin waist; more 5538
frequently, however, it would be a waist of cloth and a skirt of cloth.

Q. Any leggings? A. Yes, they would have buckskin leggings; it would be, however, more a theatrical costume than worn in the west.

Q. Without any further description, because there is none in the record, what would you say a girl cowboy suit would be worth?

Same objection and ruling.

A. It might range from $12 made of cloth to $50 of buckskin if fancily beaded. Those are extreme ranges of that; the highest offers that I name are exceptional offers that are very seldom found. 5539

Q. Have you, during the time that you have been dealing in these goods, handled, bought, sold or known of the purchase and sale of Indian saddles?

Objected to as too general. Objection overruled.

A. Yes, sir.

Q. Do they run uniformly in price, or is there a range in value? A. Oh, they are quite uniform.

5540 Q. What is the average market value of Indian saddles?

Same objection and ruling.

A. $2.50 to $12 or $15.

Q. Have you, during the same period of time bought, sold or ascertained the market value of scalping knives? A. So-called scalping knives.

Q. Why do you say so-called scalping knives? A. Well, they rig up a butcher knife and put it into a fancy beaded scabbard and sell it as a scalping knife. It is probably like the scalping knives were, but the real scalping knives that have been
5541 in actual use there is hardly enough of them outside the museums to consider them as an article of merchandise.

Q. In what does the value of scalping knives, so-called, then consist, in the knife or the scabbard? A. Well, the knife is rather a flimsy affair; it is a pretty poor excuse for a knife, and they don't amount to much.

Q. How is the value of the scabbards determined? A. The scabbards range in value from ten cents to 75 cents, with exceptional values running as high as $2.50 and $4.

Q. Mr. Deslions has testified that he had ten
5542 scalping knives in scabbards; did he show you any of them when you were there? A. I think he did.

Q. Do you remember what class of goods they were? A. The regular mercantile goods. Tourists' article.

Q. What were they worth, on the average? A. The scabbards that I remember would run from ten cents to a dollar and a quarter.

Q. Mr. Deslions has testified at page 121 of the record that he had ten of these, the scabbards of which were worth $10 apiece and the knives and scabbards together worth $25 apiece. Did you see

any scalping knives and scabbards of that kind? 5543
A. Nothing of the kind, no, sir.

Q. In the course of your experience with this class of goods did you ever hear of a scalping knife and scabbard that was worth $25? A. I never heard of such a thing in my whole experience.

Q. Did you see any Indian bows, quivers and arrows at Mr. Deslions' house? A. Yes, sir.

Q. Do you remember how many? A. No, sir; just an ordinary stock compared to the rest of the collection; nothing extra large.

Q. The claimant has testified at page 121 that he had about ten bows, quivers and arrows; do you remember whether you saw as many as that? A. 5544
No, sir.

Q. You don't remember? A. I did not see so many.

Q. Are these bows, quivers and arrows a commercial article? A. Yes, sir.

Q. Have you dealt in them? A. Yes, sir.

Q. Without giving any particular description of any one of them what are those articles worth, the three articles, bows, quivers and arrows, in the market? A. Bows covered with sinew are bought at a dollar and a quarter to $2.50; and sold anywhere from double to treble that price. The quivers, if they are buckskin and pictured, are worth 5545
out there about a dollar or a dollar and a half.

Q. What are they worth in New York? A. Twice or three times as much. The mountain lion's skin quiver sells at $2.50 to $4 there, and brings from $6 to $10 here.

Q. And how about the arrows? A. Arrows are from ten to fifteen cents out there, and sell anywhere from 25 to 50 cents here.

Q. How many arrows usually go with the outfit, with the bow and quiver? A. From six to twelve.

5546 Q. Did you see any Indian blankets in Mr. Deslions' collection? A. Yes, sir.

Q. Do you remember how many? A. There might have been six or twelve.

Q. Did you examine them? A. Yes, sir.

Q. What class of Indian blankets were they? A. Well, most of the blankets that I saw were Mexican; I asked him in particular about the blankets, and he said he had nothing that would interest me; that most of his blankets were Mexican blankets.

Q. Did you see any Navajo blankets there? A. I am positive I didn't see more than two very common affairs.

5547 Q. The claimant has testified at page 122 of the record that he had about fifteen Indian blankets, one of which was worth $250; did you see any blankets there which would be worth any such price as that? A. I didn't see a blanket there that was worth a ten-dollar bill; and I handled thousands of them, and know.

Q. Did you see any Buffalo robes there? A. Yes, sir.

Q. How many? A. Two.

Q. Please describe those, as you recollect them, as to their condition and general appearance? A. What I would class as medium, they were not poor,

5548 they were not good. That is, I mean they were not the best and they were not the poorest.

Q. I am speaking of plain unornamented Buffalo robes, not painted, or anything of that kind. A. I saw none that were not painted.

Q. Have you handled those Buffalo robes and skins? A. I have, yes, sir.

Q. What would a plain Buffalo robe, in a similar condition to those which you saw in Mr. Deslions' collection, be worth at that time?

Same objection and ruling.

A. $10 to $20. 5549

Q. I want to ask you particularly about painted Buffalo skins; how many of those you saw or were shown in Mr. Deslions' collection? A. Two.

Q. What did he say, if anything, about having more of them? A. Nothing that I remember; he went back in the back room and got one of those.

Q. Did he point out to you anything unusual or valuable about any of these painted Buffalo skins? A. The painting was discussed to some extent; but there was nothing remarkable about the painting.

Q. The claimant has testified at page 122 of the record that he had in his collection at Washington Square five of these painted Buffalo skins that were 5550
worth the whole five, from $2,500 to $3,000. What were the painted skins worth, in your opinion, that you saw in his collection, either separately or collectively? A. One of them, a good high price would be $50; the other might have brought $150 at a very good price; I have bought similar at $25 to $75.

Q. At that time did Mr. Deslions say anything to you about one of the Buffalo skins having been painted by an Indian called Yellow Hand? A. Not that I remember.

Q. Did he say anything to you about one of those skins having been captured by Buffalo Bill? A. 5551
No, sir.

Q. What is an Indian gun case; do you know that as an article of commerce? A. Yes, sir.

Q. Have you dealt in them during the time you have been in the business? A. Yes, sir.

Q. Did you see any of them in Mr. Deslions' collection? A. I think there was one or two there; I wouldn't say positively; it is so long ago.

Q. The claimant has testified that he had ten or twelve of them; did you see any such number as

5552 that? A. I should have remembered it if there had been any such amount.

Q. Why? A. The excessive amount of gun cases in a collection the size of his.

Q. The ordinary commercial article of Indian cases, what are they worth? A. $2.50 to $5.

Q. As a dealer in these articles have you dealt in wampum belts? A. Never seen sufficient wampum belts to be able to call it dealing. I have inquired their value and conversed regarding the value; I never have owned a wampum belt in my experience, and I have never had but one small piece, about that long (indicating about 6 inches)
5553 offered me.

Q. What is wampum? A. Well, it is pretty hard to give a definition of it; there are several kinds. Wampum is of several kinds; there is a little blue purplish wampum about half an inch and possibly three-quarters; it can be shorter and it is strung in lengths. I don't think I could describe it. I might with a piece of paper give a description.

By the Commissioner: State the materials.

A. (Continued): It is of shell, strung on sinew or buckskin; usually sinew.

Q. In the course of your experience as a dealer
5554 in this class of articles have you inquired what wampum belts are worth in the market?

Same objection and ruling.

A. I have.

Q. To what extent have you investigated to ascertain the market value or buying or selling value of wampum belts? A. Well, I have always talked regarding them, wherever I have come in connection with any one owning a wampum belt.

Q. About how many times have you had occasion to do that, and to ascertain the price put upon

wampum belts? A. I couldn't say how many times; 5555
but frequently; or rather at intervals. There are so few of those belts that the prices put upon them are always in connection with the historical value; they are not an article of commerce. I never had but one small piece offered me; that was in Albuquerque, New Mexico, about six to eight inches long.

Q. What is the highest price that you have known to be asked for wampum belts?

Same objection and ruling.

A. $50.

Q. As a dealer in this class of goods have you 5556
dealt in Iroquois shells and necklaces or ear-rings and necklaces? A. I have dealt in the shell ornaments used by the northwestern Indians.

Q. Are those Iroquois ear-rings and necklaces an article usually handled by dealers in Indian curios? A. Not largely.

Q. Have you ever dealt in them? A. Not to any extent.

Q. Did Mr. Deslions show you any when you went to his place in Washington Square? A. I don't remember.

Q. Did he show you any elk teeth necklaces? A. No, sir, some horse teeth.

5557

Q. How many teeth necklaces do you remember that he showed you? A. There were several there, made up by the Pueblo Indians in and about Santa Fe. They make them as an article of commerce for tourists.

Q. Was that the class of teeth necklaces that he showed you? A. That is all I saw.

Q. What sort of teeth were in them? A. I think they were horse teeth.

Q. Do you know whether or not they were elk teeth? A. I know they were not elk teeth.

5558 Q. Any of them? A. None that I saw; I never heard of their being strung that way into necklaces.

Q. The claimant has testified at page 123 of the record that he had five or six elk teeth necklaces, the whole of them were worth $500; did you see any necklaces of that description in his collection? A. No, sir.

Q. What was the value of the necklaces that you saw? A. $1.50 apiece.

Q. The necklaces that you saw were a common article of merchandise, were they? A. They were.

Q. Where can they be purchased? A. Jake Gold, or Abe Gold, Santa Fe.

5559 Q. Did Mr. Deslions show you any wampum necklaces? A. There was a class of goods that the Navajos wore that is termed wampum; he had some of that; I expect that is what is referred to.

Q. Are they a common article of commerce dealt in by dealers in Indian curios? A. Yes, I should say so.

Q. The claimant has testified at page 124 of the record that he had two wampum necklaces that were worth $150, and two others that would be worth $25 or $30 apiece. What would those that you saw there be worth? A. From $1 to $5 a necklace.

5560 Q. Did Mr. Deslions show you at that time, or did you see in his collection any deer hoof necklaces? A. I think I did.

Q. Do you remember how many? A. There might have been two or possibly three; I might have seen that many.

Q. Were there five or six? A. Not to exceed three, that I saw.

Q. Are those deer hoof necklaces an article of merchandise dealt in by dealers in Indian curios? A. Yes, sir.

Q. Was there anything particularly fine or un-

usual about the ones that you saw there? A. Not 5561
that I remember.

Q. What were they worth apiece? A. $2.50 to $3.50; that is the usual price for that class of goods.

Q. Did you see at Mr. Deslions' any grizzly bear claw necklaces? A. There were some there.

Q. About how many, do you know? A. About the usual proportion in a commercial collection; I don't think there was to exceed three of those.

Q. What does the value of a grizzly bear claw necklace depend upon? A. The customer that you sell it to.

Q. Did he show you at that time any grizzly bear 5562
claw necklaces as being an especially fine specimen? A. I think he did have one pretty fine specimen.

Q. What was that one worth? A. $10 or $12 at the outside, in the market.

Q. And the others? A. I don't remember enough about the others.

Q. What would the ordinary grizzly bear necklace that was not an especially fine specimen be worth in the market? A. $2.50 to $5.

Q. Did you see at Mr. Deslions' at that time any human teeth necklaces? A. No, sir.

Q. Are they an ordinary article of merchandise? 5563
A. No.

Q. Have you ever seen any? A. Not among Indian curios collections.

Q. Have you ever seen any anywhere, human teeth necklaces? A. Some specimens that were said to have come from the South Sea Islands.

Q. You have never dealt in them? A. No, sir.

Q. What are Indian cradles? A. Papoose carriers I call them; they are buckskin wraps, generally beaded. They strap—they are worked with

5564 porcupine sometimes and some are covered with beaded work and the baby is strapped inside.

Q. You say they are a buckskin wrap; are they just a plain piece of buckskin spread out, or are they folded or set together or made into a bag, or what? A. They are made in the shape of a long hood.

Q. How is the papoose carried in them? A. On the back.

Q. You mean the child is dropped into the hood and carried that way? A. No, it is put up into it; not dropped into it.

Q. Feet first? A. No, head first; he is put down
5565 in a little bed of bark, possibly cloth, and then he is strapped in there so that he can't kick himself loose; the bottom of it is left open, not closed; the bottom crossed just like a hood.

Q. How much buckskin does it take to make an ordinary sized cradle or carrier? A. A pound and a half.

Q. What is the buckskin in one of them worth? A. The buckskin is worth a dollar and a quarter, out there, a pound.

Q. What constitutes or what forms the basis of value of these cradles when they are complete? A. The beading and the style of beading or the porcu-
5566 pine quill work, the style of it.

Q. What are wampum beads, do you know? A. They are beads from which the wampum belts are made.

Q. I thought you said that these wampum articles consisted of shells? A. They are a kind of shell beading.

Q. Do you use the word "shell" and the word "beading" interchangeably; does one mean the same as the other? A. I think perhaps you are getting at the beads that the papoose cradle is beaded with.

Q. Yes. A. They are not wampum at all. They 5567
are little beads that are sold here in the east, traded to them and those beads are worked in the same as they work them on the moccasins; not wampum beads at all.

Q. Are they called wampum beads commercially? A. No.

Q. Did you see any of these Indian cradles or carriers at Mr. Deslions'? A. Not that I particularly remember.

Q. Are they an article usually handled by dealers in curios? A. Yes, sir.

Q. What is the average value of them? A. $6 to $15. 5568

Q. Supposing one was worked very elaborately with wampum beads; what would be its value? A. The highest price I ever got was $35, and I only got it for one.

Q. Did it have any other decorations or ornaments than wampum beads? A. Just a particularly fine piece of beading. Beaded work or porcupine quill work with tufts of hair, colored horse hair, attached was about the only ornamentation they used.

Q. Are Indian saddle cloths an article that is usually handled by dealers in your line of business? A. Yes. 5569

Q. What are they made of? A. Buckskin and beaded, same kind of beading as the other. That is one style; some are worked with porcupine and some are not worked at all.

Q. Is there an Indian saddle cloth, such as is commonly put upon the market and handled by dealers? A. Not commonly; you couldn't say commonly; there is a saddle cloth that is an article of dealers' merchandise.

Q. What is the average value of those? A. The highest price I ever got was $14 or $15.

5570 Q. Mr. Deslions has testified at page 125 of the record that he had two saddle cloths worth $50. Did you ever know of a saddle cloth of that value? A. $50 apiece?

Q. I can't tell; he says about $50. A. Especially fine saddle cloths could be worth that; two of them.

Q. They would have to be something that was not usually found in stocks of dealers, wouldn't they? A. None of the saddle cloths are very common; there isn't many of them floating around.

Q. Did you see in Mr. Deslions' collection any buffalo skulls? A. One, I believe.

Q. Describe it, please. A. It was a buffalo
5571 skull; I don't think I could describe a skull.

Q. Are buffalo skulls dealt in by dealers in Indian curios? A. Very little.

Q. Have you bought, sold or handled them as a dealer? A. No, sir.

Q. Do you know what they are usually priced at, or valued at? A. I have had them offered me at $2.50; and didn't care for them.

Q. Mr. Deslions has testified that he had a Buffalo skull in his collection at Washington Square that was worth $25; did you hear of such a price as that being asked for a buffalo skull? A. No, sir.

Q. Are buffalo horns dealt in as an article of
5572 commerce? A. Yes, sir.

Q. Upon what does the value of a pair of buffalo horns depend? A. The size and the way it is worked down; that is, polished.

Q. Did you see any at Mr. Deslions' in Washington Square? A. Not that I remember.

Q. What is the usual market value of a pair of buffalo horns, an ordinary pair. A. Polished, or not polished?

Q. Both ways. A. Ten cents to fifty cents unpolished; $2.50 to $5 polished. I had a pair with antelope horns that went through five or six of my

sales; I couldn't sell them. I tried to get $10 for 5573
them, and finally let them go for $5.

Q. Do you know what Alaska spoons are? A. Yes, sir.

Q. Are they an article of merchandise dealt in by dealers in curios? A. Yes, sir.

Q. What are they made of? A. Horn.

Q. Did you see any of those at Mr. Deslions'? A. Yes, sir.

Q. About how many, do you remember? A. No; I couldn't say how many.

Q. Do you know whether any of them had any special or unique carving or other ornamentation? A. They most all of them had more or less carving 5574
on the handles; nothing unique that I remember.

Q. What are they worth? A. $1.25 to $3.50. Exceptional pieces will run higher.

Q. Are Indian horn spoons an article that is commonly dealt in? A. Yes, sir; do you mean our Indian horn spoons?

Q. Yes. A. No, sir.

Q. What did you have reference to when I said Indian horn spoons? A. Alaskan spoons.

Q. Do you know what American Indian horn spoons are? A. No, sir.

Q. Did you never deal in any of them, or know of any being offered for sale? A. I think not. 5575

Q. Did you ever see any horn spoon, Indian or Alaskan, trimmed with porcupine quills? A. Alaskans don't use the porcupine quill work on those spoons, and the Indian spoons might be trimmed that way, but they would be American spoons,—they are wooden spoons as far as my knowledge goes. I can't remember ever seeing any American Indian horn spoons.

Q. What are these wooden spoons worth? Are they made by the Indians? A. Yes.

5576 Q. Are they ever trimmed with porcupine quills? A. The handles might be decorated that way.

Q. What are they worth, these Indian spoons? A. I have been in the habit of paying about fifty to seventy-five cents.

Q. Is that for spoons trimmed with porcupine quills? A. I bought those for 15 to 25 or 50 cents; and the other prices I spoke of I referred to old wooden spoons; they could range as high as $2.50; the commercial article they will take one of our table spoons and cover the handle with beading all the way down to the bowl of the spoon; and it may be beading or porcupine quill work; the porcupine
5577 and the beading, they use one or the other, as fancy or convenience dictates.

Q. Where do they do that sort of work? A. In the northwest.

Q. Did you see any of that class of spoons in Mr. Deslions' collection? A. Well, that stuff is usually commercial stuff; I wouldn't have remembered it.

Q. Do you know of such an article as Alaskan powder horns? Usually handled by dealers? A. Dealers have handled Alaskan stuff for those things.

Q. Have you dealt in Indian powder horns? A.
5578 Yes.

Q. What are they worth usually?

Objected to as immaterial.

A. Are you asking about Alaskan or our Indian?

Q. Mr. Deslions says he had some Alaskan powder horns, carved. A. I can't tell you anything about them.

Q. Have you ever see any? A. Yes, I have seen them in Alaskan collections; I saw no Alaskan stuff in his collection. I would like to qualify that; I did see some little Alaskan boats now that I remem-

ber; I think there were little Alaskan boats; I am 5579
not really sure of that, either.

Q. Have you had any experience in collecting or dealing in Flat Head Indian skulls? A. I have had quite a quantity of flat head skulls. Whether they were Indian or cliff dwellers or what they were has always been an open question.

Q. The claimant has testified that he had an Indian skull of the Flat Head tribe; is there any of the Flat Head tribe of Indians? A. There was.

Q. There isn't now? A. I think they are extinct; as far as I know they are.

Q. Do you know of such an article commonly known as flat head skulls? A. Yes. 5580

Q. Have you dealt in those? A. Well, I have handled—I wouldn't say just how many Flat Heads; yes, sir, I have dealt in them; perhaps twenty.

Q. What were they worth? A. The best price I ever got was $10. I never got that but once.

Q. The Claimant has testified at page 126 of the record that he had an Indian skull of the Flat Head tribe that was worth more than $200, and for which he paid $250. A. It is like the other values.

Q. Did you ever hear of such a price as that for a Flat Head skull? A. No, sir.

Q. Did you see, in Mr. Deslions' collection an 5581
Indian woman's suit trimmed with elk teeth, with over 200 elk teeth on it? A. I never saw anything like that; I would have remembered it.

Q. Why? A. It would have been such an uncommon article that even a dealer would remember it.

Q. What is an Indian woman's suit made of; what material usually? A. Squaw dress, leggings.

Q. And what is the usual price of them, without elk teeth? A. That comes under the head of squaw dress, and I have already given you a price; the highest price I ever got I think was—they range

5582 from $15—you may say from $10 to $75. I sold one very fine squaw dress to Tiffany for $50.

Q. What are elk teeth worth? A. Elk teeth are worth 25 cents to 75 cents, in bulk.

Q. Do you mean each? A. Yes; fine teeth bring higher prices for the Order of the Elks as charms, to be used as watch charms.

Q. What number, according to your recollection of these Indian squaw suits, have you ever seen trimmed with elk teeth? A. I have never seen but a very few.

Q. Are there very many of them in the market? A. I never had one offered me.

5583 Q. Would an Indian woman's suit, trimmed with over 200 elk teeth, be an unusual article to find? A. Yes, sir; very.

Q. What would it be worth? A. It would be simply a question for the purchaser and the owner to decide.

Q. It would be so unusual that a market price couldn't be applied to it? A. You could hardly apply a market price to an article of that kind. The historical value would attach to it, where it was obtained from, and who it was obtained from, who wore it, if that were possible to learn, its entire history authenticated would constitute a large part of its value, and add a large amount to its

5584 value.

Q. Did you see, at Mr. Deslions', any buffalo skins trimmed with deer hoofs? A. One of those that he had had some deer hoofs on it.

Q. When he says trimmed with deer hoofs what do you understand by that? A. They would be attached by buckskin cords, or possibly by sinew.

Q. About how many deer hoofs were there attached to this one, if you remember? A. I couldn't say.

Q. Were there fifty? A. Well, I should think 5585
that would be the outside limit.

Q. How much does the deer hoof trimming add to the value of a buffalo skin? A. It would be impossible to say. I shouldn't consider it added much if it was offered to me. In fact, I would rather have a complete skin without the deer hoofs than a poorer skin with the deer hoofs added.

Q. I will read you Mr. Deslions' testimony with reference to these two buffalo skins trimmed with deer hoofs, taken from page 126 of the record, as follows:

> "A. One was a unique piece; it was worth considerable money; there were several hun- 5586
> dred hoofs embroidered all over with porcupine; a large buffalo the skin was.
>
> "Q. The two would be worth how much? A. Well, I don't know; the other one was probably worth a few hundred dollars, but that one was, may be worth a few thousand dollars. That one couldn't be duplicated; that was the finest one that had been seen, an extraordinary value to that piece. It was unique.
>
> "Q. How much would the two be worth, fairly? A. Say $2,500. I would not have sold them for that; I would not have sold 5587
> them for $5,000."

Calling your attention to that description, did you see any buffalo skins trimmed with deer hoofs of that kind in Mr. Deslions' collection? A. I saw the one that I have valued at $50.

Q. What would there have to be about a buffalo skin trimmed with deer hoofs and embroidered all over with porcupines to make it worth $2,000 or more? A. There would have to be diamonds around it.

5588 Q. Did you ever know of such a price being asked or given for a buffalo skin trimmed any way? A. No, sir; I never heard of such a thing.

Q. Do you know of a trimmed buffalo skin in any collection that you are familiar with, of any such value as that? A. I never heard of any such value attached; nothing like it.

Q. Do you know what an Indian blanket belt is? A. A blanket belt is the same thing as a dancing belt; as I understand belts, the blanket belt and the dancing belt would be practically the same thing.

Q. Are they usually embroidered with beads or porcupine quills? A. They are worked with one or
5589 the other, as a rule.

Q. Are they an article handled by dealers in Indian curios? A. Yes, sir.

Q. Did you see any of them at Mr. Deslions'? A. Yes.

Q. About how many? A. There might have been anywhere from six to a dozen; I don't think there were more than that.

Q. What were they worth apiece, the ones that you saw? A. You could get all you want from Dan Frost for $1.75 to $3.50.

Q. Of the same kind that you saw at Mr. Deslions'? A. Regular commercial article.

5590 Q. Was that what you saw? A. Yes, sir; as far as I remember; there is nothing in those belts, as a rule, to distinguish them; some are beaded a little finer; some are worked a little finer with porcupine work.

Q. Did you see at Mr. Deslions' any collection of South Sea Island articles, such as masks or lances, or clubs or idols? A. No, sir.

Q. Did he, at that time, say anything about having such a collection? A. I have no remembrance of any talk of the kind.

Q. Did you see any collection of articles from 5591
Africa; lances, assegais, etc.? A. No, sir.

Q. Did Mr. Deslions say anything to you about having any such collection? A. I have no remembrance of anything of the kind.

Q. Did you see at Mr. Deslions' any collection of Egyptian articles, such as scarabaeus and small mummies? A. No, sir.

Q. Did he say anything to you then or at any time of having such a collection? A. I have no remembrance of anything.

Q. Have you been called upon as an expert in this class of goods to appraise any collections? A. I don't remember of having been called as an expert 5592
to appraise. I have priced a great amount of stuff for different people and for myself; I have never been called to testify as an expert.

Q. How are these collections, such as Mr. Deslions', usually priced, singly or as a collection? A. They are priced singly; commercial stuff, the largest part of it.

Q. When you went to see Mr. Deslions' collection did you make any appraisal of its value? A. I estimated what I saw on the walls about the room, as I talked with him.

Q. The articles that were in front of you? A. Yes, sir. 5593

Q. From what you saw of the different articles, did you make up a total value for them? A. I did.

Q. What was the value of the articles that you saw there, in your opinion?

Same objection as before, and same ruling.

A. The outside figure, the very highest price, $1,500.

Q. What do you mean by the very highest price? A. If he could have got a fancy price for everything, the outside figure would have been $1,500.

5594 Q. That is exclusive of what might be in the trunks? A. Exclusive of what might be in the trunks.

Q. Supposing what you saw there was sold as such collections or articles are usually sold, what, in your opinion, would be the market value of them? A. Under the hammer, do you mean?

Q. No; I mean sold ordinarily out of a dealer's store. A. $1,000 or $1,200.

Q. Do you know any persons who collect articles of this kind for purposes of making a collection, and not for purposes of sale? A. I have known a great many.

5595 Q. Name some of them? A. I am pretty poor on names; Warren K. Moorehead, of Zenia, Ohio; Gates Thrushton, a collector of pipes, Nashville, Tennessee; Mr. Keppler, of *Puck*, has a personal collection. I am very poor at remembering names.

Q. Do you know Mr. Grinnell? A. I know of him.

Q. As a collector? A. He has been to my place, I think, a few times.

Q. Have you ever conversed with any of these collectors as to the contents of their collections? A. Yes, sir.

Q. Did you ever find any difficulty on the part of
5596 any of them in remembering any of the articles that they had in their collections?

Objected to as immaterial, incompetent and no foundation laid. Objection sustained.

Q. Among what tribes of Indians have you traveled in picking up the articles that make your collection? A. Among the Navajos, the Arapahoes, the Apaches, the Isletas.

Q. Do you speak any Indian language? A. Some Navajo.

Q. You don't understand any Sioux? A. No; I

have been among most of the Pueblo tribes in the 5597
Southwest.

Q. You have spoken here of a man named Gold, in Santa Fe. Do you know him? A. Yes, sir.

Q. How long have you known him? A. Ever since I begun handling these Indian goods.

Q. How many years is that? A. Well, I say ever since; I would have to modify that; I have known him intimately since 1894.

Q. Did you know him less intimately before that? A. I knew him as a dealer.

Q. Have you ever been in his place of business? A. I used to sleep there on the floor when I was in Santa Fe, and made it my headquarters. 5598

Q. Where is his place of business? A. Gold street; I think that is it; I never bothered about streets.

Q. What sort of a place does he keep? A. It is a regular curio store. In regard to that street I would have to say as I am with names; I am not sure about the street. He keeps a long adobe building full of all sorts of this stuff; sold all over the United States; he is the leading supply house for all the southwestern houses; that is, he was; his brother is running the business at the present time; so I understand.

Q. Was he pretty well known in Santa Fe in 5599
1895 and 1896? A. I don't think there would be anybody there that didn't know him.

Q. What was he usually called? A. Jake; always spoken of as Jake Gold.

Q. Was he a man of any prominence there, aside from being a dealer in curios? A. A man that was very well liked; he had a great many friends.

Q. In 1894, '5 and '6, did he have a brother in Santa Fe?

Objected to. Objection overruled.

5600 A. I didn't know his brother at that time.

Q. What was his brother's name? A. Abe.

Q. What about him; how was he usually known, as Mr. Gold or as Abe Gold, or what? A. Abe Gold and Jake Gold.

Q. Were those the only two Golds in the curio business in Santa Fe? A. Yes, sir.

Q. Have you ever purchased goods of either of them? A. Both of them.

Q. Do they use regular printed letterheads and invoices, the same as other merchants do? A. Billheads; yes, sir.

Q. Do they always furnish them to you with your
5601 goods? A. Certainly; Jake Gold always had his picture on them, in a big Mexican hat; on top of the building was an old-fashioned cart that set up on top of the building; Jake never would sell it, and that was always on his letterhead.

Q. Have you ever had occasion to ask the one of these Golds with whom you dealt to look back and find out about any previous purchases?

Objected to.

The Commissioner: What is the object of this question?

Mr. Haldane: Mr. Deslions has testified that he had no invoices or anything of that sort, and that
5602 he never made any effort to get them.

Mr. Benedict: I don't know whether he did or not. If he said he never made any effort to get it that ends it.

Mr. Haldane: He has sworn to it.

Mr. Benedict. Well, if he has, that ends it.

Objection sustained.

Q. Did you see Deslions before he lived at Washington Square; do you know of his living at any

other place? A. He has come to my place a num- 5603
ber of times.

Mr. Benedict: That isn't the question.

The Witness: Well, I don't know where he lived, except there.

Q. Have you ever had any experience in dealing with the Indians that came here with Buffalo Bill's show? A. They are not allowed to sell curios.

Q. Have you ever tried it? A. Yes, sir; I have tried to get near them, and couldn't; that is, around the shows.

The rest of the answer, on motion, is stricken out. 5604

Mr. Benedict: Now I move that the whole answer be stricken out.

Motion denied.

Q. When did you last see any of the Indians attached to Buffalo Bill's exhibition, or rather, did you see any of them in 1899? A. Well, they have almost invariably been to my place when they have been in town. I couldn't say whether I saw them in 1898 or not; I saw them at the show; I have always seen the show when it was anywhere near.

Q. How many times have you seen them outside of the show, that they went to your place? 5605

Objected to as immaterial. Objection overruled.

A. Almost every time the show has been here they have been to my place; some of them; anywhere from four, six, to a dozen.

Q. You say that you have seen them during the time that the exhibition was in progress and you have seen them outside of the show when they would come to your place; what has been your ob-

5606 servation as to whether or not they dressed any differently when they were allowed outside from what they were when they were in the exhibition?

Objected to.

Mr. Haldane: Mr. Deslions has testified that he bought, on one occasion, from Buffalo Bill's Indians, $3,000 worth of their ornaments, outside of the show.

The Commissioner: What bearing has that upon how they dress when they come outside the show?

Mr. Haldane: They have their ornaments on.

The Commissioner: That doesn't necessarily fol-
5607 low. Objection sustained.

Q. Have you ever known those Indians, or any of them, to sell, or are there for sale, any of their curios or ornaments outside of the show?

Same objection. Objection overruled.

A. Yes, sir; they used to offer for sale small war clubs and a few articles of commercial stuff that are made out around Santa Fe. They also used to offer some om the northwestern war clubs of the cheaper kind. That is all, however, that I remember.

Q. How large an area of wall space or floor space
5608 does your stock cover at the present time?

Mr. Benedict: He says he hasn't been in the business for the last year and a half.

A. I am still selling goods, but not constantly. I have been at it for the last seventeen years; my stock of blankets cover a floor space—my offices, two of them, I believe are twenty feet by thirty, and the floors are entirely covered with Navajo blankets, and there are also blankets on the walls.

Q. Are the walls all covered with Indian curios and articles? A. No, not at the present time.

Q. Mr. Deslions has testified that his collection 5609
of Indian curios, etc., was worth $100,000. How many trunks or ordinary packing cases would it take to hold a collection of Indian curios, such as this collection seems to have consisted of, that was worth $100,000?

Objected to as utterly incompetent.

The Commissioner: I will allow it, if the witness can answer.

A. It is quite a difficult question to answer; judging from the curios that I have carried myself, it would take a hundred to a hundred and fifty cases of the description of the curios that is given in this 5610
testimony.

Q. Do you know of any collections in the United States of this class of goods of any such value as $100,000? A. I don't know of any private collection; there was one very heavy collection sold to the Field Columbian Museum, sold or donated, owned by Ed E. Ayre, that was valued at $50,000. So I was told when it was exhibited at the World's Fair.

Q. Did you see that collection? A. Yes, sir; studied it repeatedly.

Q. How did it compare in the quality of the articles with the goods that you saw at Mr. Deslions'? A. About like a hawk to a June bug. I would say 5611
that there was no comparison at all between them.

Adjourned to Tuesday, March 31, 1903, at two P. M.

NEW YORK, March 31, 1903.

Present—The COMMISSIONER;
R. D. BENEDICT, Esq.

There being no appearance on the part of the petitioner, and no witness appearing, adjourned to Thursday, April 2, 1903, at 2 P. M.

5612 NEW YORK, April 2, 1903.

Met pursuant to adjournment; all the parties being present, as heretofore stated.

CHAUNCEY W. RIGGS, cross-examined:

By Mr. Benedict:

Q. Why were you not here at the last adjournment? A. My niece was sick, short of help all around; the girl's mother was sick, and that kept her home.

5613 Q. Didn't you get word from the other counsel not to come at the last adjournment? A. What do you mean?

Q. I mean just what I say. Didn't you get word not to come to the last adjournment? A. Didn't they send me word not to come?

Q. Yes? A. No, sir.

Q. Do you call yourself captain? A. No, sir; people call me captain.

Q. You never were a captain really? A. I was captain of a boat south; several of them.

Q. Captain Riggs—you don't claim that to be your name, do you? A. Captain, I think I am entitled to claim it; yes; under all the circumstances.

5614 Q. My question is whether you do? A. I write it that way, yes, frequently.

Q. At the first part of your experience, as I understand it, you were making a collection of mound builders' articles? A. Sometimes called mound builders, sometimes Indian.

Q. When did you sell out in that branch? A. That is pretty hard to say without consulting my books; I have always been in it more or less to some extent.

Q. You stated on examination that you sold out

at a certain time. When was that? A. I sold the 5615
collection out?

Q. When was that? A. Which one do you refer to?

Q. The one that you said you sold? A. I sold a dozen, more or less.

Q. Did you sell a collection to the Library Building in Buffalo? A. Yes, sir.

Q. When did you sell that? A. Not to the Library It is now in the Library Building, I believe. I think that was in 1892, as I remember it.

Q. Did you sell any other collection than that one? A. Yes.

Q. As a collection? A. Oh, yes; I have sold many 5616
collections; quite a number.

Q. What do you mean by a collection? A. A collection means anything, a number of curios gathered together; it could be six specimens; it could be six thousand.

Q. These sales that you made, as you said, with Wanamaker were not sales of collections, were they? A. I sold many small collections from the one large collection at different times.

Q. Do you know Mr. John J. White? A. I don't remember him by name. I don't place him just this minute.

Q. You don't remember? A. I don't place him 5617
just this minute.

Q. You don't remember selling him an Indian head dress? A. I might have sold him a half a dozen and not remember it.

Q. Do you remember selling him a head-dress? A. No.

Q. You do not? A. No, sir.

Q. Don't you remember that you sold him a head-dress that had what was represented as eagle feathers on, and that he afterwards came to you and

5618 insisted on your taking it back and giving him his money back? A. No.

Q. You don't remember any such case as that? A. I don't remember any such case as that, and haven't had any such experience. I stand ready yet to take back anything I ever sold and exchange it; that is my guarantee.

Q. Don't you remember—I ask you again if you don't remember having sold to Mr. White a head-dress represented to be a head-dress of eagle's feathers, which was afterwards brought back to you by him and he insisted that you should take it back and give him his money because it was turkey

5619 feathers? A. No.

Q. You don't remember that? A. No, sir; I have no remembrance of anything of the kind.

Q. You stated that there were four different values of this kind of thing? A. Yes, sir.

Q. Which of those four values did you give in your testimony? A. I gave as a usual thing a range of values. In my testimony I tried to give information—

Q. Which value did you give in your testimony? A. I gave a range of values, as a rule.

Q. Which of those four values did you give? A. From the lowest to the highest, as a general thing; that is what I tried to give.

5620 Q. Where you didn't give any range, what value did you give? A. I tried to get at the correct value, the market value.

Q. Which of the four valuations that you say there were did you intend to give where you gave no range? A. The market value.

Q. You didn't mention among either of the four the market value. Which of the four that you mentioned did you give or try to give? A. I tried to give the market value.

Q. You didn't mention any market value among 5621
the four? A. I gave as a range of values—

Q. Note my question. Which of the four values that you stated did you give where you didn't give a range of values? A. I gave the market value as near as I could.

Q. That is not one of the four. Then you didn't give either of these four values that you had stated? A. The market value—you are bringing a new phrase into the matter entirely.

Q. I haven't said anything about market value. I am trying to shut it out, because you didn't mention it. I call your attention to what you did say? A. I will live up to all I said. 5622

Q. Why don't you answer my question, then? A. Some of these questions can't be answered by yes or no, and you cut me off when I try to make a comprehensive answer.

Q. This is what you said:

> "There is first the value that the Indian receives; there is second the value that the trader places upon them; then there is the value that the dealer here in the East places upon them; and there is what is called a collector's value. I should class them in those four classes."

Which of those four did you intend to give when 5623
you did not give a range of values? A. What I thought they were worth.

Q. You don't answer my question? A. I do the best I can at it.

Q. No, you don't. You know you can answer which of those four or you can say you didn't give either? A. I think it can be answered by saying that I didn't give either of them. I didn't confine myself—

5624 Mr. Kopf: Finish your answer. You didn't confine yourself to what?

The response of the witness is stricken out by consent.

Q. When was it that you first had a sale at Wanamaker's here in New York? A. I think it was in 1897; I can't be sure of these dates without referring to books.

Q. Have you got books that you can refer to? A. Not here; no.

Q. Didn't you know that you were going to be examined about all these matters? A. I didn't sup-
5625 pose I would be allowed to bring in books. I brought them once before and they were shut out. I can bring the books, however, to your heart's content, if you want them.

Q. I don't want them. What you need to answer correctly is proper for you to have. When was the next time that you had a sale with Wanamaker in New York? A. The last sale in New York was May—was the spring of 1898. I gave the dates before because I had the circular to refer to.

Q. You didn't give the dates before? A. Well, I think I did.

Q. Are those two the only sales that you had for Wanamaker? A. No, sir.

5626 Q. When was any other? A. It was in Philadelphia.

Q. I mean in New York; that is all I am asking about? A. Two in New York.

Q. Two in New York is all? A. Yes, sir.

Q. What was the arrangement that you made with Wanamaker's in reference to that first sale? A. What do you mean?

Q. My question is plain English. What was the arrangement you made with him in reference to that sale? A. I arranged with him to sell it.

Q. To sell what? A. The goods; placed them on 5627
sale.

Q. They were your goods? A. They were my goods.

Q. But you arranged to place them on sale in his place? A. Yes.

Q. And on what terms? A. I went in partnership with him.

Q. On what terms?

Objected to as immaterial.

The Witness: That is part of Wanamaker's business, and as such I should not be obliged to tell it. 5628

Objection sustained.

Q. How long were you in Wanamaker's place during that first sale? A. Sixty-three days, as I remember; something like that.

Q. Was the second sale under a similar arrangement? A. Yes.

Q. How long was that? A. A longer period; I don't remember the exact number of days; something like sixty odd days, each of them; one was a little longer.

Q. The goods that you brought there for the second sale were of course not the same as those you brought there for the first sale? A. Part of them 5629
were.

Q. The rest you had bought in the meantime? A. Yes, sir.

Q. How many different kinds of goods did you have there, if you can specify them? A. It will cover the whole category as stated here; a little of each kind.

Q. State what, as near as you can tell? A. Headdresses, war shirts, pipes, moccasins, squaw dresses, leggings, belts, bows, arrows, spear-points, about a

5630 thousand Navajo blankets, bows and arrows, bow cases, pottery, beaded knife scabbards. I had a pretty complete stock.

Q. How much did you have left at the end of the first sale? A. That would be pretty hard to say without going into the figures.

Q. As near as you can tell, how much in value did you have left at the end of the first sale? A. I couldn't tell you.

Q. Couldn't you tell me as near as you could tell? A. I shouldn't like to give the figures without coming somewheres near; I didn't take an inventory when I went in, and I didn't take one when I came
5631 out; I trusted to John Wanamaker's honor.

Q. Did Mr. Wanamaker have men in his employ there that took part in the business also? A. Mr. Wanamaker furnished the help—he furnished the space, and did the advertising.

Q. How many men did you have there that he furnished? A. We had anywhere from six to a dozen at different times.

Q. Can you give the names of any one of them? A. No; I couldn't at the present time; some were in a short time and out again.

Q. Have you any idea as to the amount of goods that you began that sale with? A. Yes, I should have quite an idea; I should have some idea.

5632 Q. What is it? A. Of course, the answer would be in a general way; there might have been six thousand dollars' worth, and there might have been ten.

Q. That is the nearest you can tell, is it? A. I think it would be, without consulting my books of previous sales.

Q. How much was the value that was left after the sale? A. I couldn't tell you.

Q. You can't give an idea of that? A. I might give something of an idea.

Q. Give us the idea? A. I think that would be 5633
equivalent to telling you what I sold at the sale.

Q. Well, tell me that? A. I couldn't tell you that without referring to the sale.

Q. You said you had an idea. Give me your idea? A. I can give you the facts if you want them; bring them down the next time.

Q. You said you had an idea. Give me the idea? A. I think I sold $1,600 or $1,700 worth; something like that.

Q. Out of the $6,000 or $10,000? A. Yes.

Q. How much did you have at the beginning of the second sale? A. I couldn't tell you.

Q. No idea? A. I might have an idea, but it 5634
would be entirely erroneous perhaps.

Q. Can you give me any idea of how many you had at the beginning of the second sale? A. I might have had half as much as the first time. That is, sales in New York City.

Q. Then you didn't have at the second sale all that you had left over of the first sale? A. Hardly. I was buying and selling all the while.

Q. Did you have anything in the second sale that you had bought between the first and the second sale? A. Why certainly.

Q. How much value did you have that you had bought between the first and the second sale? A. 5635
If you want the correct data, I will give you the books.

Q. You answer my questions; that is what I want. A. I most certainly couldn't tell you what I bought or sold between the two periods.

Q. I didn't ask you that. I asked you what you had bought? A. I couldn't tell you what I had bought or enumerate the bills. I can give you all the bills if you want them.

Q. Did you go to Mr. Deslions' place more than once? A. In Washington square?

5636 Q. Yes. A. I think not.

Q. Do you remember what year that was in? A. 1898.

Q. Whether it was during the first sale or the second? A. I should say during the last sale in Wanamaker's.

Q. Do you remember what time in the year it was? A. Just about the middle of the sale.

Q. When was that? A. I gave you the dates before; I think it was March 11th to May 14th.

Q. The sale was? A. Yes.

Q. And you think this visit to Mr. Deslions was about the middle between those two dates? A. It
5637 was some time along there.

Q. Did you ever have or occupy a place, a store, of your own here in New York? A. Yes, sir.

Q. Were you at that time having a separate place of your own? A. When?

Q. At the time of your sale with Mr. Wanamaker, the last one? A. I was living here in New York.

Q. That doesn't answer my question? A. What do you mean—a place of my own?

Q. A place where you had your goods for sale? A. That was with Wanamaker.

Q. Did you have any other? A. I didn't run two places at once, no.

5638 Q. Did you have any other? When did you ever have a place of your own for the sale of goods in New York? A. I had a place on Broadway.

Q. When? A. About two years ago, between Twenty-ninth and Thirtieth streets I believe it was, the west side.

Q. When else? A. I had a place on Fourteenth street, No. 138 East Fourteenth.

Q. When? A. It began in September a year ago and closed in April, the 20th I believe.

Q. Of last year? A. Last year.

Q. I began in September of 1901 and closed in 5639
April of 1902, is that it? A. Yes.

Q. Any other place than those two? A. I made exhibitions elsewhere; I haven't run any other stores.

Q. Do you remember what day of the week it was that you went to Mr. Deslions' place? A. No.

Q. Now what day of the month? A. No.

Q. Do you remember whether you went there in the morning or the afternoon? A. I couldn't say positive as to that.

Q. You had the charge of the storeroom at Wanamaker's where your things were for sale? A. Yes.

Q. Your business was to attend there, was it not? 5640
A. My business was to do as I pleased when I was in those sales; I had free come and free go.

Q. Wasn't it your duty to be there attending to those sales? A. Not if I didn't choose to be there, it was not.

Q. You were not bound to be there? A. No, sir; I was free.

Q. Who attended to the sales when you were not there? A. Wanamaker's people.

Q. How long were you present in Mr. Deslions' place at that time?

The answer is stricken out on motion of claimant's counsel and question is repeated. 5641

A. I think about two hours.

Q. Was there anybody else there during that time? A. Mr. Deslions.

Q. Anybody but him? A. I have no remembrance of any one else.

Q. Will you please give us from your memory the articles that you remember to have seen in Mr. Deslions' place at that time? A. I have already given them.

5642 Q. No, you haven't given one. Give from your memory the articles? A. I gave a squaw dress.

Q. You give the squaw dress now, do you? A. I gave the squaw dress in my direct.

Q. Never mind what you did on your direct. Answer now. I want you to give a list of every article that you remember to have seen in Mr. Deslions' place? A. I saw two buffalo robes, one child's suit, some bows and arrows.

Q. How many? A. I couldn't tell you how many.

Q. What kind? A. The usual class.

Q. Tourists' articles as you have spoken of? A. Not all of them.

5643 Q. What do you remember that were not? A. I saw one bone bow; a very fine bow.

Q. What else? A. Knives; knive-scabbards.

Q. How many? A. I couldn't tell you how many. I saw what was claimed to be two scalps and a general collection of mercantile——

Q. I don't want any general collection; I want you to specify articles that you remember? A. That is all I can give. There was one fine war shirt, I believe. I don't recall at the present time anything more.

Q. You didn't have any intention, did you, when you went there, of putting a valuation on what you saw? A. Yes.

5644 Q. You did? What for? A. He told me he was going——

Q. Never mind what he told you? A. Then I can't answer it, if you want to know what for.

Q. Yes, I want to know. What led you before you went there to put a valuation on the articles that you saw? A. For my own personal knowledge, information and benefit in the business.

Q. Did you at that time put a valuation on these articles that you have spoken of? A. I did.

Q. Tell me what valuation you put at that time 5645
on the squaw dress? A. I think about $75.

Q. What valuation did you put on the buffalo robes? A. I think about $50 or $75 for the two; I couldn't say exactly what valuation I put; in making a total.

Q. What valuation did you you put on the child's suit at the time? A. I think I remember that as worth about $50.

Q. A war shirt? A. Something like $75.

Q. And the bows and arrows? A. A general price.

Q. What value did you put on them then at that time? A. I couldn't say now; I only remember the 5646
finest things.

Q. What valuation did you put on the bone bow that you speak of? A. About $25.

Q. Knives and scabbards. What valuation did you put on them at the time? A. About ten cents to seventy-five.

Q. How many? A. What I saw there.

Q. You mean ten cents to seventy-five for the whole that you saw? A. No; ten cents to seventy-five apiece.

Q. How many did you see, so that you can say how much you put a value on? A. I couldn't tell how many I saw now. 5647

Q. How much valuation did you put on the pipes? A. A lump sum.

Q. How much? A. I couldn't tell you now.

Q. Scalps. How much valuation did you put on them? A. I valued them then at nothing.

Q. That makes $350 and that is all that you can now gives from your memory of the values that you put on any article there at that time.

The answer is stricken out on motion of claimant's counsel.

5648 Q. That is all the values that you can give of the articles that you remember as being there? A. Detailed there, yes.

Q. That is all that you remember having put a value on then, is it not? A. No.

Q. What else did you put a value on? A. I put a value on everything as rightly as I could.

Q. What else can you state that you put a value on? A. The stuff that was there.

Claimant's counsel moves to strike out the answer. Motion denied.

Q. What else did you put a value on? If you can
5649 specify any article else that you put a value on, please do so? A. I can't specify any individual article.

Q. You said that you thought it would take 100 or 150 cases to hold a collection of Indian articles worth $100,000? A. Yes.

Q. You mean, of course, at the values which you have put upon them, do you not? Answer yes or no? A. It can't be answered yes or not.

Q. Yes, it can? A. I don't see how.

Q. Did you mean at the values that you put upon these articles that it would take 100 or 150 cases? Please answer yes or no? A. I can't answer it yes or no.

5650 Q. At the values which you did give to various articles, can you tell how many cases it would take to make a collection worth $100,000? A. About what I said before. I spoke in a general way. I answered it in a general way at the time.

Q. So that it was at the values that you had given that you made that estimate, was it not? A. It was at the values that I had been in the habit of selling curios at.

Q. Wasn't it the values which you had testified

to in your examination here? A. I could hardly 5651
connect it that closely.

Q. Was it at a higher value than those you had given here? A. I don't think it was connected with the values that——

Q. It was connected with some value, because he put to you a valuation of $100,000? A. It was connected the way the question was put.

Q. The question was put as to how many cases it would take to stow a collection worth $100,000. That must be at some price? A. I estimated the valuation as well as I could, judging from the number of cases that I had packed from my own individual stuff in when I was shipping it. 5652

Q. But I am asking about the values that you estimated in making up the $100,000, whether you didn't estimate the values that you had given here? A. No.

Q. What values did you estimate then? A. Honest values.

Q. Then those that you have given were not honest values? Is that what you mean? A. I think you will find they are.

Q. But you have just said that you meant to give honest values and they were not what you gave here. At what valuation did you make of the goods when you said that it would take 100 to 150 cases to hold 5653
a collection valued at $100,000? A. As near an honest valuation as I know how to place.

Q. Wasn't that the valuation that you had given here? A. Yes, I think so; taking the whole thing through.

Q. Have you any idea as to how your valuations on those articles compared with Mr. Deslions' valuations? A. Yes.

Q. And about how would they compare? A. Only as I read the testimony; that is all; they compare about like the rainy nights to the dry ones.

5654 Q. Let us have figures. Where you have given a valuation of one dollar, what has he given? A. I couldn't tell you without going over the testimony.

Q. Isn't it more than ten times? A. Yes; sometimes twenty.

Q. The articles where you have given valuations in almost all cases you have given the valuations as I understand of articles as being what you call tourist articles, isn't that so? A. No, it is not so. I gave the range of values from the cheapest stuff to the best prices; the best prices that I gave was for the old goods, what we might class as antiques.

Q. What one article did you give such a valuation
5655 as you remember now? A. In that collection?

Q. No, in your testimony here? A. The squaw dress.

Q. Any other? A. Child's suit.

Q. Any other? A. The war shirt, the bow.

Q. Any other? A. I don't recall just at the present time any other.

Q. The rest of them then of the values that you gave were given as valuations of tourist articles? A. No, I gave the valuation as requested; I gave the range of values.

Q. Did you make any other valuation aside from this that you have just mentioned now of arieles as
5656 being different from the ordinary tourist articles? A. Yes.

Q. What ones? A. The highest values.

Q. What articles? A. I couldn't tell you what articles now.

Q. As to pipes: what valuations did you give in reference to the valuation of pipes? Did you give them as tourist articles or not? A. I don't remember now.

Q. And you can't tell us then whether the valuation that you gave was the valuation of ordinary articles that can be bought now? A. In the par-

ticular instance I gave the best answer to the ques- 5657
tion that I could give.

Q. Didn't you do that every time? A. Yes.

Q. Then you needn't repeat that again, because that answer will cover all cases? A. All right.

Q. Can you tell how many pipes you saw in Mr. Deslions' collection? A. No, sir.

Q. Can you tell what valuation you put on them? A. Not individually.

Q. Can you tell what valuation you put on the whole of them? A. No.

Q. You don't undertake to give any valuation now on the pipes that you saw there? A. I think the best pipe was worth——

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Q. I didn't ask that. You don't undertake to give any valuation now on the pipes that you saw there? A. I estimated them as I would a collection of merchandise; put them in a general total.

Q. Are you able to put any value now on the pipes which you say you saw in Mr. Deslions' collection?

The answer is stricken out on motion of claimant's counsel.

Q. Answer the question. (Repeated.) Are you able to put any value now on the pipes which you say you saw in Mr. Deslions' collection? A. 5659
Hardly; after four years.

Q. You have spoken with reference to Indian dolls and you were asked as to the average market value of Indian dolls which you gave. You meant there to give the value of the ordinary tourist articles, did you not? A. No.

Q. What did you mean to give? A. The average value of dolls: what I was asked.

Q. You had in your mind, had you not, such dolls as are ordinarily made and for sale now? A. I had the whole category of dolls in my mind.

5660 Q. What do you mean by the whole category of dolls? A. As they run; as an article of merchandise.

Q. That is to say what you can buy now? A. What you could buy for the last ten years.

Q. Then it is the ordinary doll that has been manufactured and made and sold within the last ten years; is that what you mean then? A. There are some in the collections that was perhaps made previous to that.

Q. I am not asking you what there was. I am asking you what you included? A. I included everything I knew about dolls.

5661 Q. But you never saw any dolls that had any distinctive character, as I understand you? A. Oh, yes, I have.

Q. Didn't you just testify when you were asked this question: "Q. Have you ever observed that these dolls had any distinctive character, as being portraits of any kind?" and you answered, "I never saw anything of the kind." A. Give the whole question and you will get it. Portraits of any person. They can't make a portrait of nothing.

Q. But you say now they have a distinctive character? A. Certainly, they have a distinctive character.

5662 Q. What do you mean by a distinctive character? A. Distinctive, one class or one tribe from another, perhaps.

Q. Can you give any difference between dolls of different tribes? A. No, not off hand. I might tell it to you or show it to you if we had the dolls before us. I don't think I could then; there isn't enough difference for that.

Q. You stated that you gave the average market value of Indian dolls? A. Yes.

Q. The question was "such as they usually offer

for sale?" A. Such as I have handled through all 5663
my experience.

Q. I am telling you what the question was that was put to you—"such as they usually offer for sale?" That was the kind of doll that you gave the value on, was it not? A. I gave the value on all that I knew about dolls.

Q. You mean to say that that "what are usually offered for sale" covers all you know about dolls? A. Putting the word "usually" in, no.

Q. That is here in the question? A. The rare specimens are not usually offered for sale.

Q. Which valuation did you put on Indian dolls of the four classes of valuations which you testified 5664
to? A. The market; what I call the market value.

Q. In that valuation did you mean the valuation or value that the Indian receives? A. No.

Q. Did you mean the value that the traders place upon them? A. No.

Q. Did you mean the value that the dealer here in the East places upon them? A. Yes.

Q. Then you did not put on a collector's value? A. I put on the value of the stuff I saw.

Q. Did you put on a collector's value? A. No.

Q. You recognize the fact that there is a collector's value, don't you? A. In some collections, yes.

Q. When you put a value on arrowheads, what 5665
did you mean: arrowheads which are stock articles in the market? A. I gave the best information I could, the same as all of it. The value placed—if I could distinguish those values—was more—I might classify one of them as a market value, and it might help all parties; it is possible that I stated that so it isn't quite comprehensive, and it might save all of this cross-questioning and trouble.

Q. You distinguish the market value from all the four values which you gave before, do you, now?

5666 A. No. We will put it under the head of the value placed on articles here in the East; the third value.

Q. Then you don't change the four values; you don't make another kind of a value? A. We will put it under that head to save making trouble.

Q. Did you, when you gave the value of arrowheads, give the value of arrowheads which are a stock article in the market? A. I gave a range of values, from the highest to the cheapest, taking the full range of values.

Q. What did you give as the best valuation? A. Of an arrow point?

Q. Yes? A. I can't say what I gave; about $2.50,
5667 I think.

Q. That you think was the best that you gave before? A. Yes.

Q. Didn't you give $10? A. No. I gave that as a spearhead. I qualified that later on.

Q. Coming back to the Indian dolls: did you give any other value on Indian dolls except the value of dolls such as are usually offered for sale? A. Yes.

Q. You gave a different value from that? A. I gave the average value of dolls.

Q. Did you give a value on dolls not such as are usually offered for sale? A. Average value on dolls; all kinds.

5668 Q. Did you give a value on dolls which were not such as they usually offer for sale? A. I included that in the average, yes.

Q. What kind of a doll have you ever seen sold which was not such as was usually offered for sale? A. Pretty fine dolls with beaded vests, beaded leggings, dressed up to represent an Indian; that is, having the dress of an Indian.

Q. Are not all Indian dolls dressed in that way? A. No.

Q. What makes them Indian dolls if they are not dressed like Indians? A. Because there isn't

enough of them to be dressed like anything; they 5669
are undressed.

Q. You put a value on Mexican buckskin suits. Did you give the valuation of those as the ordinary article? A. Never saw anything else.

Q. Is that true also of Mexican sombreros? A. What true?

Q. Just what you said about the suits? A. That I never saw anything else? I have seen a pretty good range of Mexican sombreros.

Q. What value do you give then on Mexican sombreros? A. The usual value. I think I gave about $1.50 to $3.75; something like that.

Q. That is the ordinary Mexican sombrero, isn't 5670
it? A. Yes, the ordinary Mexican sombrero.

Q. Did you ever see any other kind of Mexican sombrero except that kind? A. Yes.

Q. Did you ever buy or sell any? A. Yes.

Q. Then you didn't sell or buy those for $1.50? A. Yes.

Q. Not the ordinary kind? A. Yes.

Q. How did they differ from the ordinary kind? A. Fancy trimmings.

Q. What? A. Worked up with some kind of fancy working or wire, either silver or brass.

Q. And yet worth no more than sombreros without any such trimming? A. Worth more to sell, 5671
perhaps.

Q. Weren't they worth more to buy? A. You buy that stuff as you come to it.

Q. Answer my question. (Repeated.) Weren't they worth more to buy? A. I should judge they would be, yes.

Q. What is the material of which the ordinary Mexican sombrero which you speak of is made? A. Some of them are made of straw or grass; others are made of felt; some are made of beaver.

5672 Q. And yet they all run the same price? A. They don't all run just the same way.

Q. What are the different prices, if you know? A. I was asked in the question a different thing.

Q. Never mind that. What is the difference in the prices for the different material? A. The beaver would run higher than the ordinary goods, and the silver trimming. I have bought all classes, however, at the range of values given there, and sold some at the same.

Q. What is the range that you speak of? A. $1.50 to $3.50, I believe.

Q. Then the best one that you have ever bought or sold was worth $3.50? A. No, I didn't say that.

5673 Q. It reads so to me. Change it; say what is the best one that you ever bought or sold? A. I couldn't answer you that now.

Q. You have bought them out there in Mexico, I suppose? A. Yes.

Q. Did you ever buy any here? A. Yes.

Q. Can't tell what price you paid for them? A. Yes.

Q. What? A. Got some pretty good ones, one for fifty cents and on for a dollar; got them in the room now.

Q. Are they trimmed or ornamented? A. Yes.

Q. What are they made of? A. I think one of

5674 them is beaver; the other is felt.

Q. And you think those are worth $1.50? A. I think that is what I paid for them.

Q. You paid for them out there? A. No, I paid for them here.

Q. And you hold them at the same value now that you paid for them; is that it? A. I don't do business for fun; don't any of us do it.

Q. What is the value that you put on them? A. I don't buy goods and sell them at the same price I gave.

Q. Therefore, I ask you what is the value you put 5675
on them? A. I will be glad to sell them to you for $5 apiece or $5 for one and $2 for the other.

Q. Can you tell the highest value that you have ever known or heard of to be paid for a Mexican sombrero here in the East? A. You don't want hearsay, do you?

Q. When I ask it, I do? A. I have heard of all sorts of stories.

Q. What is the highest that you have ever heard? A. These values that Deslions gives is the highest values I ever heard of on earth anywhere.

Q. What is the highest you ever heard of outside of these? A. I think about a quarter. 5676

Q. A quarter of what? A. Of those values that he gives.

Q. What is the value that you have ever heard as paid for a Mexican sombrero, the highest, outside of Mr. Deslions'? A. I said about a quarter. I think I have heard of them going as high as $25 or $50. I think he has got some at $250.

Q. You were asked with reference to ordinary Mexican bridles, and you gave a value on them. Did you give a value of those as the market value here, as you speak of, or the value out in Mexico where they were bought? A. I gave the value on ordinary Indian falls as they are bought and sold, 5677
Mexican bridles as they are bought and sold, there and here.

Q. You didn't give two valuations before. Do you give two valuations now? A. There isn't any on Mexican bridles.

Q. No valuation at all? A. I think I gave you a valuation there, did I not?

Q. I thought you just said now there was no valuation on them. Perhaps I misunderstood you. A. I think you did. I meant to say there was no difference in the value of Mexican bridles either

5678 there or here; they are simply common leather wherever they turn up.

Q. Did you ever hear of a bridle that was advertised for sale by Buffalo Bill? A. No.

Q. You also gave a value of the ordinary Mexican saddle. Did you give that as a valuation here or a valuation in Mexico? A. What I said of the bridle will apply to the saddles as well.

Q. What is that? A. The valuation there and here of a Mexican saddle would not differ materially.

Q. You mean only on the ordinary Mexican saddles? A. That is the question I was asked there,

5679 yes.

Q. As to anything special about a saddle, you don't say that that would be the rule, do you? A. No.

Q. You said you had had two Mexican trunks. Have you got them now? A. No.

Q. Sold them? A. Yes.

Q. Sold them for what you paid for them? A. No; I am not in business for that.

Q. What did you sell them for? A. I can't say; I got less than $15 for both of them, as I remember.

Q. But you gave more than that, according to your testimony? A. I gave more than $15 apiece according to my testimony?

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Q. For the two? A. I got less than $15 apiece, as I remember. They are a very hard thing to sell I found.

Q. You were asked as to the value of Indian rattles and gave testimony about that. Did you give that valuation as the value here, the dealer's value, or the value out West where they are bought? A. The highest to the lowest value I gave there.

Q. What do you give as to the lowest value out there where they are bought? A. Fifty cents, I think.

Q. Where can you buy Indian rattles for fifty cents? A. Bought a good many from Jake Gold. 5681

Q. Anywhere else? A. Pueblo Indians.

Q. What are they made of? A. Gourds; some of them are made of gourds; some are made of skin.

Q. What kind? A. The skin is softened and then stiffened into the shape of something like a child's rattle with a handle to it, some hair ornament attached, sometimes beading; and there is others that are stretched over a coiled stick. I could hardly describe them.

Q. Did you ever buy any such rattles as that in New York? A. I don't know that I ever did.

Q. Did you ever sell any in New York? A. Yes. 5682

Q. Whom did you ever sell any to? A. The general run of my customers.

Q. Can you name one? A. Not as regards a particular rattle, I couldn't; I can give you a good many customers.

Q. Would the price vary at all according to whether the rattle was made of gourd or skin? A. Yes.

Q. How much and which way? A. A gourd rattle might be worth four to six dollars; a skin one would be worth three to four and a half a dozen in the West, and sold here for 75 cents to $1.50. An antique gourd rattle would bring more than the skin rattles. 5683

Q. Do you know anything about Apache rattles? A. I know something about stuff that is classed as Apache rattles.

Q. I asked you if you knew anything about Apache rattles? A. As they are classed——

Q. Will you describe the Apache rattle? A. It is a skin rattle made by the Pueblo Indians down in New Mexico, shipped up into the Northwest and sold for Apache rattles.

5684 Q. The Apaches are not Pueblo Indians, are they? A. No.

Q. Do you know anything about Sioux rattles? A. The same applies to those; most of the rattles are made in the Southwest, shipped up into the Northwest, and called a different name.

Q. Did you ever ship any of them to the Northwest? A. No; I didn't.

Q. Know of anybody who ever did? A. Yes.

Q. Who? A. Jake Gold.

Q. Do you know whom he shipped them to in the Northwest? A. Stilwell.

Q. Where? A. Deadwood, South Dakota. At
5685 least, he told me so. I have seen the rattles come down and know them when I see them.

Q. Do you know anything about the Iroquois rattle? A. No, not classed as Iroquois.

Q. You spoke about ceremonial drums. I understand you to say that there are no real ceremonial drums on the market anywhere? A. No, I didn't say so.

Q. I so understood you? A. I said I had never seen any on the market anywhere.

Q. Then you have no knowledge of any? A. Certainly not, if I never have seen any.

Q. Then what you spoke of as ceremonial drums
5686 was not the real ceremonial drums; is that so? A. I said it wasn't, right there.

Q. You say so now? A. Certainly; what I said before I will say now or next year from now.

Q. You gave a value on Indian war clubs? A. Yes.

Q. Which value did you give when you gave the value on Indian war clubs? A. In one place I gave the Indian values, I believe, and I gave you the prices that they sold at here; they sold at double, in some cases triple.

Q. Do you refer to any particular tribe? A. War 5687
clubs.

Q. Any particular tribe of Indians? A. No, not any particular tribe; they don't run as tribes; they come in bulk.

Q. Then what you gave as the value is what you buy in bulk? A. Yes. I gave some higher values. I stated that some would run much higher than those ranges.

Q. What valuation do you think you gave as the highest? Do you remember now what you gave? A. I don't remember.

Q. What valuation do you give now, the highest that you have ever known? A. I might give you 5688
a single instance, I think I got $18 for one once.

Q. Is that here in New York? A. Yes.

Q. Do you know what kind of a war club that was? A. Yes.

Q. What tribe? A. Gold-bearing quartz.

Q. Do you know what tribe it was? A. Said to be Sioux.

Q. And gold-bearing quartz? A. That is what I understood it to be.

Q. Did you buy it? A. Yes.

Q. Whom did you buy it of? A. L. W. Stillwell.

Q. You mentioned Indian shields, as I understand it, those that you saw at Mr. Deslions'. Did 5689
you see any at Mr. Deslions'? A. Yes.

Q. You remember that? A. Yes.

Q. You didn't mention it before. You remember it now? A. Yes.

Q. Was that one of what you call the commercial stuff sold to tourists? A. It wouldn't hardly class that high.

The rest of the answer is stricken out on motion of claimant's counsel.

5690 Q. You gave also a value on war bonnets trimmed with eagle feathers. Which of the valuations did you give when you testified with reference to that? A. I gave the range of values, from the highest to the lowest.

Q. The highest out in the West? A. No; here.

Q. To the lowest out in the West? A. Yes.

Q. What do you say is the highest that you have ever known paid here? A. $65.

Q. Did you sell it? A. Yes.

Q. Whom to? A. Mr. Nelson, the owner and manager of the Kansas City *Star*, Kansas City.

Q. Not here? A. Not here in New York. You
5691 were speaking of the East. I class Kansas City——

Q. As East? A. As Central.

Q. Did you ever sell any such war bonnet here in New York? A. Similar.

Q. Same price? A. Didn't get that much.

Q. Whom did you sell it to here in New York. A. Couldn't give you the name here; I don't remember names well.

Q. You just remembered one? A. That is because I traded it for advertising.

Q. You don't remember anybody else that you sold a war bonnet to? A. I will give you the whole list if you want me to; I don't remember them now.

Q. Don't you remember any now? A. No.

5692 Q. You say you saw in Mr. Deslions' collection a war shirt. Will you describe the war shirt that you saw there? A. I could not give a description of it at this time.

Q. Could you tell whether it was new or old? A. Oh, yes.

Q. Which was it? A. Old.

Q. Does the age of it give it an additional value? A. Under certain circumstances, yes.

Q. Under what circumstances? A. If it has been worn to produce that age, as aged appearance. Dirt

itself will increase the value of these curios if you 5693
can get enough of it on.

Q. This war shirt that you saw in Mr. Deslions', did that have dirt on it? A. Undoubtedly it did; I never see one that didn't.

Q. All of them then have this same thing that you say—— A. Yes.

Q. Gives value to them? A. Yes, they have all got dirt more or less.

Q. The dirt is what gives them the value, is that it? A. It seems to be one of the chief ingredients.

Q. In value? A. In increasing the value, if it is spread on by actual wear.

Q. You say that you have sold hundreds of pairs 5694
of leggings? A. Did I say that?

Q. Yes? A. Well, then I did.

Q. Those were leggings that you bought in the ordinary way, were they not? A. I bought them any way, every way.

Q. Did you buy them in a lot? A. Some of them; some of them singly.

Q. How large lots? A. Two or three; five or six pairs.

Q. Buy them of Jake Gold? A. Bought a few of Jake.

Q. Were they the recently made leggings or antiques? A. Jake had both classes. 5695

Q. I ask you what you bought? A. I bought both classes.

Q. What you sold? A. I sold both classes.

Q. Do you make any difference in value between the two classes? A. Yes.

Q. What difference do you make? A. According to the material; according to the article.

Q. Can you give any estimate of different values by reason of age? A. The leggings; hardly by reason of age; more by the beadwork.

Q. Now moccasins; have you ever bought or sold

5696 any ancient moccasins, antique moccasins? A. Pretty antique, yes.

Q. How old do you call antique? A. When they got the soles all wore out.

Q. That would depend rather on the wear than on the age, wouldn't it? A. That is about all there is that constitutes the antiqueness of a pair of moccasins; moccasins are different; moccasins wear out. War shirts are a different thing.

Q. I ask you if you have ever sold any antique moccasins? A. Yes.

Q. How old do you call them? A. We don't put an age on this stuff.

5697 Q. How old would you call an antique? How old must a thing be to be an antique, of moccasins? A. Pretty hard to draw the line with moccasins.

Q. You drew the line, for you said you had sold an antique; I ask you again, how old a thing must be to be called an antique in moccasins? A. I couldn't give you the period in years. We would class the moccasins from observation, in looking them over, taking the general appearance all the way through; there is certain styles of work that appear on moccasins years back that has a different appearance.

Q. How many years back? A. That again would

5698 be very hard to say.

Q. You can't tell? A. I don't think any one can tell.

Q. Well, you can't? A. I don't think any one can.

Q. I didn't ask you about any one. I am asking about you? A. That would include me, wouldn't it?

Q. It might, yes, fairly, I think. But you say that is your opinion as to other people; as to yourself, you know? A. I believe I said so.

Q. Do you know anything about whether there

has been any change in the shape of Indian moc- 5699
casins or material in the years that are gone by? A. They are generally shaped according to the shape of the foot.

Q. How about the material? A. They have been made of what was the most convenient for the Indian to get, from the sandals that were braided out of human hair and animal hair on up to buckskin, elkskin, buffalo hide, etc. They have used what they could get.

Q. Have you seen any buffalo skin moccasins recently? A. Not recently, no.

Q. Not within the last twenty years, have you? A. Yes; I have seen them within that period. 5700

Q. Within fifteen years? A. Not made within fifteen or made within twenty.

Q. And those would have more value, would they not? A. Some of them might, according to how they were made.

Q. If they were made before the buffalo became extinct wouldn't they be more of more value than other moccasins? A. The beading would have to be taken into consideration even then.

Q. Of two that had the same beading, wouldn't they be more valuable if made before the buffalo became extinct? A. Certainly.

Q. You didn't apparently know about what they 5701
call dancing belts, as I understand it? A. I didn't class them as dancing belts. I understand the different belts.

Q. Give us the different belts? A. There is belts made of buckskin trimmed with porcupine work, tufts of hair; there is belts made of skin ornamented and covered on one side completely with beadwork.

Q. Then the differences that you spoke of are the differences in material and manufacture; is that it? A. It is the difference in belts.

Q. But what do these differences consist in, ex-

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5702 cept the difference in material and manufacture? A. The workmanship.

Q. That is manufacture, isn't it? A. We don't use the word manufacture in this.

Q. You understood what I meant? A. I am trying to give you the proper answer.

Q. You say workmanship instead of manufacture? A. Yes.

Q. Is there anything else except the material and workmanship? A. The material and workmanship would naturally constitute the value.

Q. That is all the difference that you make between belts; belts that are made of different ma-
5703 terial and different workmanship? A. I don't think of anything else to put into it just now.

Q. Do you know what are these belts that you speak of as beaded belts? Do you know what these different belts are used for in a different way? A. Yes.

Q. What? A. They are used to wrap around a blanket to hold it in place; they are used for the squaws to wear around their blankets; they are used in their ceremonials; they wear them about the same as we would use a belt.

Q. All the same kind? Are the ceremonial belts the same as the squaws use? A. They might make
5704 some—I have heard that they made some distinguishing mark; I know of none.

Q. The belts that you spoke of then in your direct examination were the ordinary belts for ordinary use; it that so? A. I never saw anything but ordinary belts.

Q. Then those are what you spoke of? A. They are all ordinary belts that I have seen.

Q. Then those that you spoke of are ordinary belts? A. I never saw anything extraordinary about a belt.

Q. When you spoke of belts did you speak of any-

thing else except the ordinary belt? A. I think I 5705
did speak of the number of eagle feathers that might be attached; you could string eagle-feathers to a belt, and increase its value; but it is not customary.

Q. You didn't give any increase of valuation on that by reason of eagle feathers? Do you give an increase of value? A. I allow for the usual amount of eagle feathers in those values.

Q. What allowance did you make for eagle feathers in the values that you gave? A. The allowance as it applies to belts, as it enters into the value of a belt; they string on one from to two or three eagle feathers; they are generally pretty short feathers and don't class anything extra. 5706

Q. I understand that these belts with eagle feathers are the ordinary belt used for ordinary purposes? A. According to the number of feathers; I say that they might string on a number of feathers and increase the value.

Q. It isn't a question of might. The question is what you know as the fact? A. I know it as a fact, that they can do it, yes.

Q. Do you know it as a fact that they do do it? A. Yes.

Q. What difference does that make in the value? A. According to the number of eagle feathers that you string on. 5707

Q. What is the belt with the feathers on used for, do you know, anything except the ordinary belt? A. They would be more apt to be used in the ceremonies.

Q. Do you know anything about whether it is? A. I know what we read, and what we have seen, what we are taught.

Q. Do you mean to say that you have ever seen such belts with eagle feathers used in any of their ceremonies? A. I have seen them used in their ceremonies in the Southwest, yes.

5708 Q. By what tribe? A. Pueblo tribes.

Q. What value do you give in reference to Indian tobacco pouches? A. The highest range of value; the lowest and highest, I think; something like $1.50 to $1.25 to $6, $7.50.

Q. Is that the highest value that you gave? A. No; I think I gave one instance of a higher value, that I bought one at a higher price; I had one very fine piece that I paid more for.

Q. I understood you to say that you had seen these dancing belts with feathers used in the Southwest among the Pueblo Indians. A. I have seen feathers attached to the belts. I have told you
5709 from the beginning to the present time, that classed as dancing belts, I didn't recognize them.

Q. Where, in what Pueblo, did you ever see any such belts used in dances? A. I have seen them in Sandy Hill de Farzon, New Mexico.

Q. Do you know what the occasion was? A. Some one of their ceremonies.

Q. What you don't know? A. I don't know, no.

Q. Do you know what time of the year it was? A. No.

Q. You gave a value of saddle bags. What valuation did you give there? A. The same as in the other; from the highest to the lowest; aimed to; I tried to give an honest value of the goods.

5710 Q. Did you ever buy or sell any tents, Indian tepees, such as you saw the photograph of here? A. No.

Q. Did you ever know of a purchase or sale of such tents as you saw here? A. Perhaps not exactly like those; similar; there are never two tents ornamented alike.

Q. Did you ever know of the sale of Indian tents here in New York similar to those? A. Calf tents, yes.

Q. With ancient pictography on them? A. With 5711
pictography on them.

Q. As for ancient you won't undertake to say? A. I should hate to.

Q. Did you ever make any such sale? A. I said a moment ago that I hadn't; I think I have; I would like to change that.

Q. Do you know whom you sold it to? A. Yes, I sold it to a show to go up the country.

Q. You don't know who the man was? A. No.

Q. You can't find the man that you claim to have sold it to? A. Yes, I can find it on my books.

Q. Can you tell me where I can find it? A. No; he was a showman. 5712

Q. Now scalps. Have you ever bought or sold Indian scalps here in New York? A. No.

Q. You say you saw a squaw dress and you put a value of $75 on it? A. Yes; a beautiful dress.

Q. Will you describe it? A. I couldn't describe it accurately at the present time. It was a dress beaded with blue beading and quite an old dress. It might be classed among the antiques. I don't class any of those buckskin goods as really antique; it is more as ancient, would be the heading that I would put it under. An antique I would apply to the very old stuff that is taken from graves and found around the old Indian sites where the vil- 5713
lages were, as a rule I would class as antiques.

Q. Did you ever buy or sell such a squaw dress as that? A. Similar.

Q. Where? Here in New York? A. I bought one in Washington and sold it in New York. The beading was different.

Q. Whom did you sell it to in New York? A. Tiffany; Tiffany's people; Mr. Farnham; I think he got the dress.

Q. When did you sell that to him? A. I couldn't tell you the exact date.

5714 Q. About when? A. It was some time between the two sales; I couldn't say when.

Q. Between the two Wanamaker sales? A. Yes.

Q. You have given valuations on individual articles. If a collector has a collection of different articles, does the fact that he has a full collection, complete, increase or decrease the value? A. That is according to who has them, according to their authenticated history; and it is according to how complete the collection is.

Q. If those particulars do exist, the value is largely increased, isn't it? A. Supposed to be, yes; ethnologically, if the histories are all attached. But
5715 those histories have got to be authenticated to make them of any value whatever ethnologically.

Q. Where there is such a collection as I have described the collection as a whole would be worth very much more, would it not, than the price of each individual article? A. What do you mean? As described here in the evidence?

Q. As I have described it. (Repeated.) If a collector has a collection of different articles, does the fact that he has a full collection, complete, increase or decrease the value? A. It would increase the value; but there has got to be a great many details or particulars taken into consideration.

5716 Q. But nevertheless, with those particulars, and those details, the value is very largely increased? A. Certainly.

Q. You said you didn't see any chief suits in Mr. Deslions' place, as I understand? A. Yes.

Q. Do you make a difference between the head-dress and war bonnet? A. No.

Q. What you have said about head-dresses would apply to war bonnets? A. Yes.

Q. You were asked also with reference to Indian saddles. Have you ever bought or sold any Indian saddles here in New York? A. I have

bought them west and sold them here, yes; I have 5717
bought some here, I think. I bought some of Frost.

Q. Can you tell any person that you sold an Indian saddle to? A. I can give you all these facts if you like me to look them up from my books; I can't tell offhand now.

Q. Can't name one person? A. If I could think of the name. I can't remember names well. Yes; sold one to Joseph Imhoff.

Q. When did you sell it to him? A. Last fall a year ago, as I remember.

Q. Do you know where Mr. Imhoff is now? A. No; I can give you his last address that I know of.

Q. What was it? A. Somewhere on Fourteenth 5718
Street.

Q. Did you see in Mr. Deslions' collection any scalping knives? A. Yes; that is, so-called scalping knives.

Q. You called them scalping knives? A. I accepted them; I never saw anything that I was absolutely sure of as scalping knives; that is, in collections; there is some in museums.

Q. Those that you saw there you called scalping knives? A. I accepted them as scalping knives.

Q. When you speak of them you speak of them as scalping knives, if you did speak of them? A. Well, yes, they would be spoken of that way. 5719

Q. But you, as I understand it, say that they are not real scalping knives, or didn't you see them to know? A. I think I said I saw them.

Q. What do you say now? A. I say I saw them.

Q. Did you take them out of the scabbard? A. I couldn't say as to that.

Q. How could you see them unless you took them out of the scabbard? A. Possibly Mr. Deslions took them out for me.

Q. Did he? A. I couldn't say.

5720 Q. Then you don't know that you did see any scalping knives. A. Yes; I saw them.

Q. Did you see them out of the scabbard or in the scabbard? A. Must have seen them out of the scabbard if I seen them, mustn't I?

Q. Did you examine them enough to know what make they were? A. Yes; it didn't take long.

Q. What do you say the make was? A. The make of a pretty cheap butcher knife.

Q. Are there any different varieties in scalping knives? A. I am talking about so-called scalping knives. I am not admitting that there is any scalp knives in collections or mercantile collections.

5721 Q. You are confining yourself to mercantile collections, are you? A. I am confining myself to a collection such as I saw at that time, and the general run of collections.

Q. Of mercantile collections? A. Mercantile and others.

Q. What others do you mean besides mercantile? A. I mean collectors' collections.

Q. Do you say that there is any difference in the different varieties of scalping knives? A. About as much difference as there is in cheap butcher knives; I don't think I ever saw many of them alike.

Q. Would it make any difference in the value of
5722 a scalping knife as to whether it had been in use? A. If you could prove it had been in use, yes.

Q. Then it would? A. Oh, yes, certainly.

Q. Would be very much more valuable, would it not? A. Certainly, if you could prove it; it would have an ethnological value then. Mind you, that proof has got to be absolute and sufficient to convince an archaeologist or ethnologist.

Q. Did you ever buy a scalp knife of an Indian? A. No; nor nobody else of the present generation I don't think. I mean of the last ten or fifteen years, or something like that.

Q. You gave a valuation with reference to bows, 5723
quivers and arrows; you were asked if they were a commercial article and you said yes? A. Yes, such as I saw in this collection were, with one exception; I wasn't permitted to tell of that; or didn't think of it at the time.

Q. You were not permitted to tell of it? A. Or didn't think of it at the time. I am willing to give you all the good I can.

Q. You now say that you remember to have seen one bow? A. Yes.

Q. How did that differ from the other bows? A. Made of bone.

Q. Is that all? A. I couldn't tell you the exact 5724
difference; it was an antique.

Q. Did you have it in your hand? A. Yes.

Q. Did you examine it? A. I did.

Q. Was there a quiver attached to it? A. Not that I remember.

Q. Did you see any quivers at all there? A. Yes.

Q. How many? A. I couldn't tell you.

Q. What kind of quivers? Do you remember that? A. The usual mercantile stuff.

Q. Such as you buy for tourists? That is what you mean, is it? A. Such as is bought and sold, that you can replace; you can keep your stock up in.

5725

Q. Keep your stock if you wanted to sell? A. Yes.

Q. Do you remember anything about whether there was any particular tribe that these quivers that you saw belonged to? A. This tribe business is pretty much in the man's mind that is selling it. I have never been able to get their histories; consequently couldn't give them.

Q. Then you don't remember anything about these quivers belonging to any particular tribes? A. No, not to a particular tribe.

5726 Q. You saw, you say, two buffalo robes? A. Yes,

Q. Have you known of any sales of buffalo robes recently? A. Yes.

Q. How recently? A. Within four or five years.

Q. Have you sold any yourself? A. Yes.

Q. To whom? A. I couldn't tell you.

Q. Where? Here in New York? A. Yes.

Q. But you can't tell to whom? A. I can't tell to whom, no; I couldn't give you the name.

Q. For what price did you sell? A. I don't remember.

Q. Do you know anything about the age of that buffalo skin that you sold? A. Not in years; it
5727 was a good old skin.

Q. I think you said that you had bought buffalo robes for $3? A. No, I never said any such thing.

Q. But you don't say now, at any rate, that you have ever bought a buffalo robe for $3? A. No.

Q. You admit, do you not, that buffalo robes are not to be found in the market as a general thing now? A. Not as a general thing.

Q. Since the extinction of the buffalo? A. You run on them occasionally.

Q. Have you seen any offered for sale within the last five years? A. Yes.

Q. Where? A. Here in New York.

5728 Q. Can you tell by whom? A. Yes; a party by the name of Haley.

Q. Where? A. As I say, I can't remember names; I don't remember the initials or address; I can't give you that. I can't give you streets or numbers, not right offhand; it was here in New York however. I am willing to give it to you.

Q. Is the man to be found in New York? A. So far as I know he is; he had a hotel up the street.

Q. What do you say that you think you could buy a buffalo robe in good order in New York now

for? A. I had one offered for $20 here within the 5729
last four years; a good one.

Q. What about now? A. I don't know if I could find the party that had it. I could get it the same now, I guess. I didn't attach much value to it. Those things are as you find them. Some people value them more, some less. The highest price that I ever paid for one, I think, was $75; very elaborately painted.

Q. When was this? A. That was within the last four or five years.

Q. Can't you give it any nearer than that? A. That was one of the Haley robes.

Q. Were there more than one? A. Yes; he had 5730
two.

Q. Did you give a value on the two? A. Which two.

Q. The two buffalo robes that you have just spoken of? A. This one was $65 and the other $75, as I remember now.

Q. When you specified Indian gun cases, you spoke of the ordinary commercial article of Indian gun cases, did you? A. All kinds.

Q. Did you speak of the ordinary commercial article when you gave the value? A. I spoke of all kinds, in giving all of these values.

Q. You were asked what is the ordinary market 5731
value of Indian gun cases worth, and you gave a value. Did you mean——

The answer is stricken out on motion of claimant's counsel.

Q. I want to know whether when you gave the value you were asked the ordinary commercial article of Indian cases, and you gave it—you meant to give that value of that article, did you not?

The answer is stricken out on motion of claimant's counsel.

5732 Q. You were asked this question: The ordinary commercial article of Indian gun cases, what are they worth? And you testified. Didn't you mean to say in your answer that that was the value of the ordinary commercial article? A. Yes; that is the way the question was put, and I answered it that way; yes, I meant to say it.

Q. What do you mean by the ordinary commercial article of Indian cases? A. Anything that is brought here East and sold.

Q. What do you mean by the ordinary article of Indian gun cases? A. Anything that is brought here and sold.

5733 Q. No matter what kind it is? A. Yes. There would be some that might be extraordinary; I should add that.

Q. But the valuations that you gave were the ordinary ones? A. Yes; I believe so.

Q. You, as I understand it, deny that there is any such thing as wampum belts? A. You have got to brush up on the business if you understand it that way.

Q. I take it right back, you didn't say that you didn't understand that there was no such thing, but you did say that you had never seen enough to call it dealing? A. Yes; I did say that.

5734 Q. What amount of experience have you had in wampum belts? A. I have had the experience that wherever I have run on to a person that has had a wampum belt I have conversed with them about it, asked them the value, and asked them the price.

Q. Can you tell any man that you ever ran on to that had a wampum belt here in New York? A. No. I told you I am bad on names.

Q. Do you remember that you ever did come across anybody in New York that had a wampum belt? A. I am quite sure of that.

Q. But who or where or when you can't tell? A.

I can't now offhand; I will take that up for you if 5735
you want that real bad.

Q. Can you tell what valuation was put on a wampum belt at that time? A. The best value I ever had asked was $50.

Q. What was the size of that wampum belt? A. A good big one.

Q. What do you mean by "a good big one?" A. I call it a good big one as described to me——

Q. But you saw it, didn't you? A. No.

Q. You didn't see it? A. No, it was described and talked about. They don't peddle those things. I told you about the one that I did see; I saw one.

Q. You said a piece about six inches long? A. 5736
Yes.

Q. That is all that you ever saw? A. Yes; outside of the museums.

Q. Do you know what wampum necklaces are? A. Yes; so-called wampum necklaces.

Q. Do you mean to say that they are not wampum necklaces? A. I mean to say that they are the beads that the Indians wear; they are sometimes called wampum. They are not the old style of wampum as is put into belts; but it is out in the western country they are called beads; here they call them wampum necklaces.

Q. But you say they are not wampum necklaces? 5737
A. No, I don't say so; I say they are so called.

Q. What do you say they are? A. They are shell beads, as I class them.

Q. Are different wampum belts made by different tribes? A. Certainly.

Q. Do you know by what tribes? A. No; I couldn't go into the archaeologocial or ethnological part of it.

Q. Is that the same thing that you refer to as being the beads that papoose cradles are beaded with? A. No.

5738 Q. Those are different? A. That is American stuff shipped out there, traded to them.

Q. And when you spoke of the value of papoose cradles, you meant that kind of article, did you not? A. I meant what is used; they don't use wampum on papoose cradles.

Q. Those you say are shipped from here, manufactured there and brought back here? A. Yes.

Q. Did you ever buy or sell buffalo skulls here? A. No.

Q. Ever buy or sell them anywhere? A. No.

Q. Ever have them offered to you? A. Yes.

Q. Where? A. I don't know that I can say ex-
5739 actly where; I have had them offered at different times; I have had parties come into my sales and offer to ship them to me; I wouldn't take them —an ugly thing to handle around; I don't like them.

Q. Can you tell any place where you ever had a buffalo skull offered to you? A. I can't tell any particular place.

Q. Can you tell any price that you have had them offered at? A. Yes.

Q. What? A. I have had them offered at $2.50 apiece; I have had them offer to ship me—well, as they expressed it—carloads.

5740 Q. That is, from the West? A. Yes.

Q. Not here? A. Offered here; come into my sales.

Q. The price that you speak of is the price to the Indian? A. No; that is the price here; men from the West would offer to deliver the things here.

Q. You can't remember any one now that ever offered any such thing? A. No; I can't remember names; my memory is pretty weak on a whole lot of this evidence, you know.

Q. You said that you knew of an article called flathead skulls? A. Yes, I do.

Q. You didn't mean that they were skulls of the 5741
Flathead tribe of Indians, did you? A. They are flathead skulls.

Q. The question can be answered yes or no. I repeat it. A. A human being can't answer it yes or no. I am here to tell the truth to both of you.

Q. You don't answer my question? A. You put a question in a different light and I can't answer it.

Q. (Repeated.) You didn't mean that they were skulls of the Flathead tribe of Indians, did you? A. I meant that they were flathead skulls.

Q. (Repeated.) A. You might put them flathead skulls.

Q. You don't answer my question? A. You call 5742
things one thing—everything turns on that answer.

By the Commissioner:

Q. Did you mean by that the skull of a tribe of Flathead Indians? A. I meant Flathead, as it relates to a tribe, there might be a half a dozen of them, you see, and I would be in it when I come and get it again. I don't care to be balled up here, and I won't be by the whole of you. I know this end of the business.

By Mr. Benedict:

Q. You have got to answer my question. A. I 5743
mean that they were flathead skulls.

Q. (Repeated.) You don't answer the question. You didn't mean that they were skulls of the Flathead tribe of Indians, did you? Did you or didn't you? That is a simple question to answer, whether you did or whether you didn't? A. They might have been.

Q. That isn't the question. It is what you meant at that time? A. I might have meant it.

Q. (Repeated.) Did you? You know what you

5744 meant? A. I meant that they had flathead skulls. I meant that those skulls were flattened. I meant to say further that I don't know whether they belonged to the Flathead tribes or whether they belonged to some other tribes, or whether they belong somewhere else.

Q. You say you have known skulls that were flattened? How, in what way? A. Flattened apparently with a board placed over them.

Q. Where was the flattening? A. Front and back; not both in one skull, understand me; they may be flattened at the back, they may be flattened in front.

5745 Q. You said you had had a great many? A. I said—I have not dealt; possibly I said I dealt—I bought and sold.

Q. You said about twenty? A. Yes; that is right.

Q. Where have you sold any of those? A. I think you will find them——

Q. I don't ask you where I will find them. I ask you where you have sold them? A. I have sold my largest collection of skulls to a party in Cincinnati. They are now in the Art Museum there.

Q. Did you sell more than one flattened skull there? A. I don't remember.

5746 Q. Do you remember of anywhere else where you ever sold a flattened skull? A. I say they have been in the collections; I didn't take enough interest in them.

Q. But you say you have sold twenty? Where? To whom? A. I have sold them in the different collections; it might be in the Field Columbian Collection in Chicago; they might be in Buffalo; they might be in Europe; I don't know; I didn't take interest enough in the stuff. I have dug up over 5,000 of them, and didn't care enough about them to classify them one way or the other; but

have had the flattened skulls, that I know, and 5747
have sold them.

Q. You say you have had twenty? You don't change that? A. I don't change that; about twenty.

Q. You have given a valuation of articles here that you remembered which foots up to $350. How do you arrive at any valuation of anything else? A. For the rest of the collection?

Q. Anything else that there was there? How do you arrive at that? A. You mean how did I estimate it? How did I arrive at the value?

Q. How do you arrive at any value other than the values of the things you remember to have seen 5748
there? A. I sat in the room and I ran the collection up on the walls by sections, and I valued it; as I got a hundred dollars I put down a thumb; as I got another, a finger; another, another finger, until I had went over the entire room. That is how I estimate my values, and you will find I can do it very closely.

Q. Then do you remember now what value you did estimate at that time? A. Yes.

Q. What was it? A. I estimated the collection that was in room, at the outside figure, $1,500; what he had on the outside from his conversation, giving him the benefit of every doubt, at $1,000 5749
more.

Q. This is the first we have heard of anything outside of the room? A. We are talking about the collection.

Q. Specify what you refer to, to make up this additional $1,000? A. He said he had two cases out there that was packed, cases or trunks; said he put some stuff away to get rid of the moths, and he was going across the water, going to take it to Europe.

Q. To exhibit? A. Yes, to exhibit. I estimated

5750 the collection, for the simple reason that I was running it through my mind if it would pay him to go to Europe with such a small collection, that I thought I would stand a pretty fair chance to go to Europe too. That is how I came to estimate it.

Q. How do you get at a valuation of $1,000 on things which were not specified to you and which you don't know what they are? A. I don't think he had $500, but I say I will give him the benefit of the doubt.

Q. How do you arrive at an estimate of $1,000 on things when you didn't know what they were? A. I estimated that there was about three cases in
5751 the room, and he said he had two more outside.

Q. That is the way you got at it? A. I got at it closer than you think.

Q. Is that the way or is it not? A. I done it by force of reasoning that I was able to make through my knowledge of the curio business.

Q. Let us have the reasoning by which you arrived at a value of $1,000 on things that you didn't know what they were? A. I went over the collection on the walls by sections.

Q. That you said before? A. Yes. I want to give you the force of reasoning. There was so many warclubs; they were worth so much money; and
5752 when I got to $100 I put a thumb down.

Q. That you said before? A. Yes; that is part of the reasoning though. And then I went over and there was so many knives, scalps, and there was so many bows and arrows, and when I got to $100 I put another thumb down; then I went to another section on the wall and I went clear around the room. During this time we were talking about the collection; he was telling me some things that he had, and I was drawing him out as far as I could, trying to learn all about what the possibilities were in Europe. From his conver-

sation I understood that he had something back. 5753
He went out and got one of the buffalo robes; he said he had material back that he had packed away on account of the moths. I figured that if he had $1,500 in the room at the very outside, and it would fill three or four cases, allowing that it was similar material equally as valuable or even more so, that there might be $1,000 in the two chests.

Q. And that is the way you arrived at it? A. A. That is the way I arrived at it.

Q. You said that you were down in Santa Fe? A. Yes.

Q. When was that? A. I have been there repeatedly. 5754

Q. When? A. I was in New Mexico from 1894 to to 1896.

Q. Two years? A. And I have been there since; went out to buy goods twice since.

Q. Did you go anywhere else to buy goods except Santa Fe? A. Yes, I was down in Texas.

Q. Where? A. El Paso.

Q. Anywhere else? A. I run pretty well over Arizona and New Mexico.

Q. Santa Fe is New Mexico? A. Yes, part of it.

Q. Anywhere else? A. Not on those particular trips. 5755

Q. Any other trips? A. Yes. You don't want all my trips, do you?

Q. I want to know where—I was asking you whether you had gone to any other places than Santa Fe and El Paso to buy goods? A. Yes. Do you want them?

Q. Yes. A. It covers seventeen years. I went to Durango, Colorado, in the spring of 1890 I think. I have traveled in Western Tennessee, Arkansas; I have made eight or ten trips in Arkansas.

Q. Did you buy any Indian curios there? A. Called Indian curios.

5756 Q. Buy any Indian curios in Tennessee too? A. Yes.

Q. What kind of curios did you buy in Tennessee? A. These flints and arrow heads which you have been questioning about the price.

Q. Do you remember being in Santa Fe traveling with other people, a man and a woman there, and somebody selling the horse and wagon there? Do you remember any such thing as that? A. That might have been a dozen people, selling a horse and a wagon, during my experience, or there might have been forty.

Q. I am speaking of people who were traveling
5757 with you or in your party, you or they selling a horse and wagon? A. No.

Q. You don't remember any such thing as that? A. No.

Q. You said you had been a captain of a vessel I think? A. No; I said of boats.

Q. What do you mean? What kind of boats? A. Different boats, house boats, floating boats, sail boats, etc., on the Mississippi River, the St. Francis River, etc. I think I am entitled to write Captain. I think I am Captain Riggs. I have been called it sufficiently and I believe I deserve the title. However it wasn't Captain Riggs that he said was not my name. He said "Riggs is not his
5758 name, I know it."

Q. Did you ever have a certificate as a captain? A. No.

Q. Did you ever have your name on any boat's papers as a captain? A. I don't claim to——

Q. Just answer my question. Did you ever have your name on any boat's papers as captain? A. No; unless they were on the names of the books. What do you mean? Licensed to run a boat?

Q. Yes. A. No; run them without a license.

Adjourned to Tuesday, April 7, 1903, at 2 P. M.

NEW YORK, April 7, 1903. 5759

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT.

A representative from the office of petitioner's counsel asks for an adjournment, as Mr. Haldane and Mr. Kopf are out of town.

At the request of Mr. Benedict the hearing is set peremptorily for Thursday, April 9, at two P. M.

5760

NEW YORK, April 9. 1903.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT.

Mr. Benedict states that he has received word from his office that a telegram has just come from Mr. Kopf, dated in Boston, stating that he is detained there in the examination of witnesses, and requests the Commissioner to adjourn the case for a week. Mr. Benedict says he declines to consent 5761
to an adjournment, and moves that the testimony on behalf of the petitioner on this claim be closed.

Motion granted.

Adjourned for the taking of rebuttal testimony to Monday, April 13, at 2 P. M.

5762 NEW YORK, April 13, 1903.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT.

Testimony Taken in Rebuttal.

DANIEL HOWARD HAYWOOD, being duly sworn and examined as a witness for Deslions, in rebuttal, testifies:

5763 By Mr. Benedict:

Q. What is your business? A. Solicitor of patents.

Q. Here, in the city of New York? A. At 220 Broadway, New York.

Q. Do you know Mr. Deslions? A. Yes.

Q. How long have you known him? A. Five or six years.

Q. Have you any experience in reference to Indian curios and relics? A. I have; I am interested in such curios and relics.

Q. What experience have you in reference
5764 to them? A. I have been collector in a small way of Indian curios and relics for four or five years; but I have been interested in collections for perhaps ten years, and a collector of a good many oriental goods as well as Indian novelties, and am generally interested in curio collections.

Q. What experience have you in seeing collections of Indian curios? A. I take the opportunity of looking at any Indian collections that I hear of, and that I am able to see; I invariably take the opportunity when in museums in different cities

to look particularly at the Indian collections; I 5765
have also seen a few private collections.

Q. What knowledge, if any, have you of the articles that are generally sold here in market by people that deal in Indian curios? A. I will have to ask you to put that question a little more fully to me.

Q. Have you been here into different places where such articles are sold as articles of merchandise? A. I frequently go to such places here in the city, and have bought more or less from such people.

Q. Do you know whether there is any distinction between what are called the ordinary commercial 5766
articles of Indian curios and the more rare and valuable articles? A. I do; I think I now fully understand your question. I have the knowledge that there are certain articles which are valuable to collectors and museums, and certain other articles of a cheap grade, which are sold to children as playthings or as cheap articles for presents, etc.

Q. Have you ever traveled out among the Indians yourself? A. No, I have not; but I am acquainted with a few Indians here in the East.

Q. Did you ever see Mr. Deslions' collection? A. I have seen parts of Mr. Deslions' collection at various times; I am not sure that I ever saw his en- 5767
tire collection; in fact, I am quite sure that I have not.

Q. Where have you seen his articles? A. I first saw his collection in Twenty-third street; the exact number I forget; it was between Sixth and Seventh avenues I think; later Mr. Deslions moved to Washington square and I again saw portions of his collection at Washington square.

Q. How many times do you remember that you have been to his place? A. In the Twenty-third street place four or five times possibly; in the

5768 Washington square place perhaps seven or eight times.

Q. Did you see in both places some of the same articles? A. I did.

Q. And some different articles I suppose? A. Yes.

Q. How much of an examination did you make of the collections when you saw them? A. Such an examination as one who is interested in this class of goods would naturally make; I looked around at the various articles and admired some and inquired as to the price of others, and generally took an interested view.

5769 Q. Do you know, when you were in Washington square, whether you saw the whole that Mr. Deslions had, or whether he had other articles that you didn't see? A. I am quite sure that I only saw part; for the reason that Mr. Deslions would often fetch things from another room, if I inquired about certain articles that I wanted to see, or which I recollected from his Twenty-third street place; also he brought other articles for me to see that I did not particularly inquire about, as being new articles that I had not seen before.

Q. What was the character of the articles that you saw, as to their quality I mean? A. I saw a

5770 number of very high-class articles which interested me very much from a collector's standpoint. Mr. Deslions' articles were generally articles considered valuable from a collector's standpoint.

Q. Were they what you would call the ordinary tourist's commercial articles? A. They were not.

Q. Can you specify any particular ones that you remember to have seen? A. I never saw any articles of the tourist's character that you refer to; though I have a recollection that Mr. Deslions at one time told me, while in his place in Washington square, that he had a few such articles; that he ob-

tained together with collections of better class goods, but he did not show them to me, knowing that I would not be interested in them, and told me that he was trying to dispose of them in trade for articles of the character he was more in the habit of handling. 5771

Q. Can you specify from your memory articles that you did see of the higher grade of goods? A. Yes, I can; I can specify some Buffalo robes which I saw, particularly I can specify a puma quiver which I admired very much; I remember a large number of pipes, Indian pipes; but this collection I think extended to other forms of pipes, as for instance South African, Zulu pipes; but a large number of Indian pipes were in the collection. I recollect buffalo hide shields, Iroquois dancing masks and war shirts, leggings, beaded moccasins, Indian clubs, squaw clubs, gauntlets, leather beaded cowboy shirts decorated by the Indians, and beaded squaw dresses, squaw leggings, a number of articles decorated in porcupine and beadwork, such as pipe pouches and other articles of similar nature. 5772

Q. What do you say as to a collection of articles of different kinds like that, whether the fact that there is a collection of them increases the value of it, or what effect it has upon the value of the individual articles? A. Most certainly a collection of articles has a higher value than the articles singly; as for instance dancing masks, pipes, etc., have not nearly as much value by themselves as they have in sets or in quantities, when the quantities represent different specimens of the same class. 5773

Q. Do you remember whether there were any articles which Mr. Deslions declined to sell? A. Yes; I tried to price certain of the articles with a view to purchasing them, possibly purchasing them myself, or for friends who were also interested in

5774 curios; but in many instances Mr. Deslions refused to put a price on them as belonging to his collection and not for sale at any price; I mention particularly the puma quiver, as an article that I very much desired to obtain from him, but that he refused to sell.

Q. I show you a picture; do you remember ever having seen that before? A. Yes, sir.

Q. What do you know of its history? A. This card was reproduced from a painting made by Gustave Verbeek, an artist who had a studio in the same building in which I had rooms at the time Mr. Verbeek himself showed me the original and
5775 told me he had made it for Mr. Deslions.

Q. Did you ever see any of the articles that are in that picture in Mr. Deslions' collection? A. I have seen all of the articles depicted, or similar articles, in Mr. Deslions' collection.

The card is offered in evidence, and marked Exhibit A for identification, of this date.

Q. When you visited Mr. Deslions' collection did you sometimes have other friends with you? A. Yes; in Washington square I took Mr. G. H. Grant with me; Mr. Grant occupied apartments with me
5776 on Fifth avenue at the time, and we went down at my solicitation to Mr. Deslions' rooms, and together looked over his collection. Mr. Grant was also interested in Indian curios.

Q. Did you ever go with Mr. Deslions to Buffalo Bill's show? A. I did.

Q. Will you tell us about that, what you remember of it? A. Mr. Deslions told me he expected to be given a box at Buffalo Bill's show and invited Mr. Grant and me to go with him, if he obtained the box. Later he verified his invitation and Mr.

Grant and I met him and we occupied a box at Buf- 5777
falo Bill's show in Madison Square Garden, and saw the show.

Q. After that did you leave with Mr. Deslions? A. Mr. Grant, Mr. Deslions and I left the show together.

Q. Were you introduced to Buffalo Bill at that time by Mr. Deslions? A. No.

Q. Do you remember whether on that occasion Mr. Deslions saw and was acquainted with any of the Indians that were exhibiting in Buffalo Bill's show? A. He was; he nodded to many of the Indians who returned his salutation, during the show, and after the show he spoke to many of the In- 5778
dians who stopped and shook hands with him and talked with him, while we walked through the street north of Madison Square Garden, towards Broadway. One of the Indians, an interpreter, joined us, and walked with us as far as Broadway; but Mr. Deslions spoke to some of the Indians directly and not through the interpreter.

Q. Have you any knowledge as to Mr. Deslions' knowledge in reference to matters of ethnology and Indian curios? A. I have always looked upon Mr. Deslions as quite an authority on the subject, and he always answered any questions on the subject that I asked very readily, and I invariably found 5779
his information reliable.

Adjourned to Wednesday, April 22, at two P. M.

5780 NEW YORK, April 22, 1903

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT.

DICKSON D. ALLEY, being duly sworn and examined as a witness for Deslions, in rebuttal, testifies:

By Mr. Benedict:

5781 Q. What is your business? A. Photographer.

Q. Where is your place? A. 12 East Fifteenth street.

Q. How long have you had a place there? A Under my own name, since the 1st of December; prior to that, for about six years, as a member of the firm of Townley & Co.

Q. Do you know Mr. Deslions? A. Yes, sir.

Q. How long have you known him? A. As near as I can recollect, between twelve and fourteen years.

Q. I show you a photograph, Deslions Exhibit 1, November 20, 1902. Do you recognize that photo-

5782 graph? A. Yes, sir.

Q. Did you take it? A. Yes.

Q. Where? A. In the rooms at 12 East Fifteenth street; in my skylight there.

Q. How did you come to take that photograph? A. Because it looked so nice in the first place. I wanted it for myself.

Q. How did the articles come to get arranged like that there? A. The Kit-Kat Club had rooms there—a club of black and white artists had a club-room down beneath me and they had a smoker in January of that year.

Q. What year was that? A. January, before the 5783
loss of the *Bourgogne*, '98, I think. They had an exhibition down there, a smoker, and induced Mr. Deslions to exhibit some of his pipes there. Mr. Deslions got me to assist him in placing one of my old backgrounds—this is one of my old backgrounds—the Sunday prior to the smoker. The smoker was on Monday evening. That Sunday brought them down there; all down in my studio over this Kit-Kat Club, placing these pipes over this background; put it back in place and the next evening we brought the thing downstairs and had it on exhibition there. How I come to make the photograph then; a great many of the artists there 5784
would like to have a print of them so that night we brought it upstairs, somewheres around 12 o'clock that night, and the next morning I made a photograph.

Q. And that is the photograph? A. That is the photograph.

Q. Where was Mr. Deslions' place at that time? A. He is in so many places.

Q. Did he have a place there in that same building? A. Yes, he was there in that building, the front room, the hall room.

Q. Where was he living? A. Living down—sometimes Hancock street and sometimes at Washing- 5785
ton square.

Q. At that time? A. At that time.

Q. Did you see him when he was living in Washington square? A. Yes, sir, I saw him then.

Q. Wasn't he living in Washington square at that time? A. No, he wasn't.

Q. Did you ever see Mr. Deslions' card at that time, at that place? A. Yes.

The card is offered in evidence, and marked Exhibit A, of this date.

5786 Q. How did the pipes come to your place to be put on this background? A. Mr. Deslions brought them in satchels and some of them he had bundled up; some pipes had long stems.

Q. Were you in the habit of going to his rooms? A. Yes.

Q. Did you see other pipes in his rooms besides those? A. I did.

Q. Many or few? A. Had a number of pipes. As near as I can recollect—a hard job to count those —100 on this background.

Q. How many others? A. Had quite a number.

Q. Can you give any estimate? A. A lot left
5787 over that couldn't get on this background; put them back in satchels and carried them home; quite a number on the floor where we were selecting them from.

Q. Have you ever met a man by the name of Riggs, a dealer in Indian matters? A. I never met him, so far as being introduced to him, but I have seen the man.

Q. Where have you seen him? A. Saw him in Wanamaker's. Had a sale, exhibition, on the ground floor; saw him afterwards in Deslions' place on Washington square.

Q. When was it you saw him in Deslions' place
5788 on Washington square? A. It was early in the spring or early summer.

Q. Spring of what year? A. The year of the loss of the *Bourgogne*.

Q. Can you give the date of it any nearer than that? A. I know it was a Sunday.

Q. What fixes it in your memory that it was Sunday? A. Because it was the date that we had made it up previous; Deslions and myself had had a bicycle excursion in view for some time. It was to take place on Sunday. I was to come down to his house instead of him coming up to my house,

which was in Yonkers. I know very well I wouldn't 5789
do that on a week-day; employed every day in the week.

Q. When you went to Mr. Deslions' for that expedition was it that you saw Mr. Riggs there? A. Yes.

Q. Was he there? A. Came afterward.

Q. Were you waiting there? A. Waiting for Deslions to accompany me on this bicycle ride.

Q. Did he give any reason for waiting? A. Told me he couldn't go right away, because he expected a visitor there.

Q. Who was the visitor? A. Proved to be this Captain Riggs. 5790

Q. Did you stay there—this was in Washington square? A. Washington square, yes.

Q. You were there when he came, as I understand it? A. Yes, he came after I came.

Q. You were there when he came? A. Yes.

Q. Were you there when he went away? A. Yes.

Y. You stayed there all the while? A. All the while, yes.

Q. How long was he there? A. As near as I can judge, that man was there— came upstairs, three flights of stairs had to climb, out of breath, he was short of breath, fell in chair there in the corner near one of the windows; sat there puffing and 5791
blowing for a while; meanwhile I was there impatient to get off on our journey. I was back and forth in the dining-room, because I was acquainted with Mrs. Deslions—I don't think that man was there, at the utmost, twenty minutes.

Q. You were in and out of the room during that time? A. Yes, I went in and spoke a while with Mrs. Deslions and to see if the man was ready to go.

Q. What part of the room did you find him? A. Sitting by one of the windows.

5792 Q. Always in the same place? A. In the same place, yes.

Q. Did you see him anywhere else, except in that one place? A. No, except when he got up to go out.

Q. And you saw him go out? A. Yes.

Q. And then you and Mr. Deslions went off? A. We didn't go off immediately. Mrs. Deslions insisted on us having a cup of coffee or little bite to eat, and then we went off.

Q. Did you hear any of the conversation that passed between Mr. Deslions and Mr. Riggs? A. Yes, incidentally.

Q. What was the subject of the conversation that
5793 you heard? A. Subject of the conversation, as near as I can recollect, bartering; wanted to exchange some business with some little odds and ends that Mr. Deslions had.

Q. Was the barter made, as far as you know? A. Not as far as I know. The captain going to go out said "You bring the things over and I will look them over"—to the place where he had his exhibition.

Q. Where was that? A. In Wanamaker's.

Q. Was Mr. Riggs ill at the time at all? A. He was out of breath in coming up the stairs.

Q. Did he give any reason why, did he say what
5794 was the matter? A. I know there was a little table in the center of the room with tobacco and cigars and liquors on, like French people generally have there; asked him to take a cigar and wouldn't take it; that he couldn't smoke.

Q. Did he say why he refused it? A. No, said that he couldn't smoke; didn't care about smoking, couldn't smoke.

Q. Did you ever see Mr. Riggs after that? A. I seen him once or twice on Fifth avenue, walking along University place, going out with camera.

Q. How often were you in Mr. Deslions' place

where you could see the articles that he had? A. I 5795
have been in every place that Mr. Deslions had. I can enumerate them off here, if you like.

Q. What kind of articles did you see in Mr. Deslions' place—at these different places? A. He had an awful lot of articles, a great many articles, and, of course, the larger ones more apt to recollect. I recollect he had buffalo robes, had war shirts and Indian clothing in general, blankets, bows, arrows, pipes, and so on.

Q. Have you knowledge enough of Indian curios to tell what kind of articles these were, as to the quality of them? A. No.

Q. What were the dealings that Mr. Deslions 5796
had? A. The dealings with me?

Q. Generally? A. I always understood in conversation with him and hearing what he was doing, that he was supplying articles for collections; sometimes to museums and sometimes to private individuals.

Q. Do you know what kind of articles Indian articles are, called tourists' articles? A. I do.

Q. Were the articles Mr. Deslions was dealing in, were they to be classed as tourist articles? A. No, sir.

Q. Did you make the photograph from which that card, Exhibit A for identification, April 13th, 5797
is printed? A. I did.

Q. What did you make the photograph from? A. Photograph plate. What did I make it on?

Q. What was it a photograph of? A. This was a painting.

Q. Did you ever see the articles that are painted there? A. Seen every one of them.

Q. Were they Mr. Deslions' articles? A. They were; yes.

Q. Did you know about the painting, making of the painting? A. Brought it to me to photograph.

5798 Q. Who brought it to you to photograph? A. Mr. Deslions.

Q. Do you know who painted it? A. He told me at the time, but I have forgotten.

Q. ave you any knowledge about pipes other than that? A. I have studied them up.

Q. How much have you studied them up. Tell me what experience and knowledge you have about pipes? A. Studied pipes for the past ten years.

Q. How studied them? A. Studied from the articles themselves, studied in books of travel; travelers described them in writings, government reports, ethnological reports of United States govern-
5799 ment; so I know a good deal about them.

Q. Were you ever employed in a museum? A. Museum of Art.

Q. Do you know enough about pipes to say as to whether that collection of pipes that are photographed was or was not a valuable collection? A. I would say it was.

Q. Do you know anything about prices and values? A. What prices can you put on things you cannot buy—things you cannot duplicate, unless you manufacture them yourself? Any value you please, $1 up to $1,000. Pipes there that you couldn't duplicate, unless you manufactured them
5800 yourself.

Q. Have you any knowledge about purchases or sales of pipes or anything of that kind? A. I have attempted to buy them with my limited means and I couldn't; all I could do was borrow them and make a photograph. (Examining photograph.) There is one there——

Q. Can you specify any one? A. Alaska pipe, walrus-tusk, marked B; and a dealer on corner of Broadway, in the Domestic Building, Broadway and Fourteenth street, had a similar pipe for which he wanted $125, for I priced it.

Q. Similar to that marked B? A. Similar to 5801
that.

Q. Any others? A. There is a pipe there made as a modern northwest coast pipe, British Columbia.

The Commissioner: Is it marked?

The Witness: No, not marked.

Mr. Benedict: They are all numbered, if you can get the magnifier on them.

The Commissioner: Marked with a X.

Q. What can you tell us about that pipe? A. Similar pipes have been sold at auction in New York—at sales that I have attended—that have 5802
brought $25; and there is one pipe there that I can specify that you cannot buy for anything; only way you can get it is to steal it. Similar pipes Killawhale; they are made by the Alaska Indians; marked X X; that is a very valuable pipe. I know it. That Ashantee pipe, got a mark around, ring around, I recognize that one as being a very valuable pipe. There is another valuable one from Tennessee. Take the whole thing; they are all valuable pipes, especially the American branch of them. Pipes, as they run, outside of European pipes, are all very valuable pipes; all unique specimens of their character. There are pipes here which 5803
are figured in Catlin's book; although only fifty years old, are antiques, because they have lost the art of making them and they can't be obtained.

Q. What was your business before you were a photographer? A. I was up in the Metropolitan Museum of Art, part as custodian and assistant repairer of antiques.

Q. Before that? A. I was a sexton and undertaker.

Q. Were you ever in a lawyer's office? A. I was.

5804 Q. Whose office? A. Owen, Nash & Grey. I left them to become a sexton and undertaker.

The Commissioner: How long ago were you there?

The Witness: I went there in 1872. It was Owen, Rose & Daniels, and then it was Owen, Nash & Grey.

Adjourned to Wednesday, April 29th, 1903, at 2 P. M.

NEW YORK, April 29, 1903

5805 Met pursuant to adjournment.

Present—THE COMMISSIONER;
R. D. BENEDICT, Esq., for claimant.

MRS. AUGUSTA ROESS, being duly sworn and examined as a witness for the claimant Deslions, testifies:

By Mr. Benedict:

Q. Where do you live? A. 509 West Forty-first
5806 Street.

Q. Was Mrs. Deslions your sister? A. Yes, sir.

Q. Do you remember the time when she sailed on the *Bourgogne?* A. She sailed on Saturday morning——

Q. You remember that time? A. Yes, sir.

Q. Where were you living at that time yourself? A. I was living with my sister.

Q. Where was it? A. On Washington Square.

Q. Did you go to the steamer with Mr. and Mrs. Deslions? A. Yes.

Q. Do you remember about what time you ar-

rived at the dock? A. About nine or a quarter after 5807
nine, I am not sure.

Q. Had you seen the trunks taken away from the place at Washington Square? A. No; I don't remember whether they took them away on Saturday morning or on Friday night.

Q. Did you find them on the dock when you got there? A. Yes.

Q. Do you remember how many there were about? A. There were not less than twelve, may be thirteen; I don't know, or may be fourteen. I know there was many of them.

Q. What was the size of the trunks? A. Regular big trunks. 5808

Q. Did you know what was in the trunks? A. Yes, sir.

Q. Had you seen them packed? A. Yes, sir.

Q. What was in them? A. Indian collection, and of course everything of my sister's and many jewelry from my brother-in-law, and many things.

Q. Did you help pack the trunks yourself? A. Yes, sir.

Q. Do you remember that after your party got to the dock there was a question raised about the carrying of the trunks? A. Yes, sir; there was some talking on the dock about the trunks.

Q. Did you hear Mr. Deslions talking about that 5809
with the employees of the steamer? A. Yes, sir.

Q. Tell me what you remember about that? A. I can't tell you much about that, because I don't remember very well.

Q. Tell me what you do remember? A. I know there was some talking about the receipt for Paris and to go from Paris; I can't tell you very much.

Q. Tell all that you do remember? A. That is all I can tell you, because I was with my sister, and Mr. Deslions was talking with those men, and I didn't hear everything what was said.

5810 Q. What was the talk about? A. To take them to France. I don't know much about that; I can't tell you exactly.

Q. Do you remember whether Mr. Deslions paid any more money for the trunks? Did you see any money paid? A. I know they said he would have to pay more for the trunks than he have to pay for the tickets; but I don't know how much.

Q. Did you see him pay the more that they asked? A. No; I don't know what he paid.

Q. Did you see him paying? A. Yes.

Q. You saw him paying, but how much you don't know? A. No; I can't tell you that.

5811 Q. Did all the trunks that were there go on the steamer? A. No.

Q. What did not go? A. A little valise and a little trunk with some clothes for the little girl and some clothes for my brother-in-law; that is all.

Q. They didn't go on the steamer? A. No. My cousin took them back with his wagon.

Q. After Mme. Deslions went on the steamer you didn't go with her on the steamer? A. No; we can't.

Q. Did you try to go on board the steamer; you and Mr. Deslions? A. Yes, sir.

5812 Q. Why couldn't you go? A. I don't know what for, we could not go, but they wouldn't let us go; the steamer was going to leave soon; they wanted to take that gangway down.

Q. You went to go up the gangway? A. They were going to take it out; it was too late.

Q. Do you know what Mr. Deslions wanted to go on the steamer for? A. Yes, sir.

Q. What was it? A. To give some money to my sister.

Q. When they stopped him from going on board,

what did he do? A. He gave the money to some 5813
man to give to my sister.

Q. A man connected with the steamer? A. Yes.

Q. How did you know he was connected with the steamer? A. Because he had a uniform on.

Q. Mr. Deslions gave the money to this man with the uniform? A. Yes, sir.

Q. Which one did Mr. Deslions give the money to? A. I can't remember; I know it was a man with a uniform.

Q. Do you know how much in dollars Mr. Deslions gave him? A. Yes, sir.

Q. How much? A. $20.

Q. Did he tell the man what to do with it? A. 5814
Of course he told him to give it to my sister.

Q. What did he tell him to do? A. To give it to my sister, because he couldn't go and give it himself.

Q. Was it put in a paper, an envelope? A. Yes, sir.

Q. And did anybody write on the envelope her name? A. I don't know; I can't tell you.

Q. And then the steamer sailed? A. Yes; it was in the last minute.

Q. Did this man to whom Mr. Deslions gave the money, did he go on board the steamer or did he give it to somebody else? A. I don't think so; I 5815
guess he gave it to somebody else; he went to the steamer, and it was some man from the steamer, I guess.

Q. Did you see Mrs. Deslions on the steamer as the steamer was leaving? A. Yes.

Adjourned to Wednesday, May 6, 1903, at 2 P. M.

5816 NEW YORK, May 6, 1903.

Met pursuant to adjournment.

Present—THE COMMISSIONER;
Mr. BENEDICT;
Mr. KOPF,

Mr. Koft: In view of the fact that the Commissioner has closed the petitioner's proofs in the matter of this claim, in the absence of Mr. Haldane, of counsel for the petitioner, I am willing to go on with the cross-examination of the witnesses called
5817 for to-day, providing that it is without prejudice to any motion we may make to reopen the case, so far as the petitioner is concerned, and put in the remainder of the proofs; otherwise we shall withdraw.

The Commissioner states that he has nothing whatever to say upon the suggestion of counsel.

Mr. Kopf: I ask Mr. Benedict if he will consent to my cross-examination of these witnesses without prejudice.

Mr. Benedict: It is a matter for you to say, what you will do; I will not consent to anything. I am ready to go on with my proofs.

5818 Mr. Kopf withdraws.

WALTER TONNELE, being duly sworn and examined as a witness for Deslions, testifies:

By Mr. Benedict:

Q. What is your business? A. I am president of the Tonnele Company, photographers and artists.

Q. How long have you been in the photographing business? A. About twelve years.

Q. Are you acquainted with Mr. Deslions? A. 5819
Very well, indeed.

Q. Do you remember visiting his rooms and seeing his collection of Indian affairs that he had there? A. Yes, I am pretty thoroughly acquainted with it.

Q. How many times do you suppose you visited that collection? A. Well, inasmuch as I was behind Mr. Deslions at the time I couldn't say exactly how many time I was there, but I have seen it almost daily.

Q. Where was it that you saw this collection? A. I have seen it in Washington Square, and also at 12 East Fifteenth Street. 5820

Q. Was your business then at 12 East Fifteenth Street? A. It was at 12 East Fifteenth Street.

Q. Did Mr. Deslions have a place at 12 East Fifteenth Street? A. He did.

Q. I show you a card, and ask you whether you have seen that card of Mr. Deslions'? A. Yes, sir, I wrote it and had it printed.

Q. When? A. It is certainly five years ago.

Q. Before the loss of the *Bourgogne?* A. Yes.

The card is offered in evidence, and marked Exhibit 1 of this date.

Q. I show you Exhibit A for identification of April 13, and ask you if you are familiar with that? 5821
A. Yes.

Q. What do you know about that? A. That is a half-tone made from my photograph of a drawing made in my office.

Q. The photograph was made in your office? A. The photograph was made in my office.

Q. Do you know who made the painting? A. No, I do not.

Q. That was made before the loss of the *Bourgogne?* A. Oh, long before that.

5822 Q. Do you know what the articles are that are represented on that picture? A. Yes, I think I do.

Q. What were they? A. There is a shield I see, and a buffalo horn, I think, and a tomahawk, pipe, and another pipe, and a water bottle, I think that is Zuni, and there is a rattle which is undoubtedly North New York, and a mask, which I don't know, and a tobacco pouch is probably Sioux.

Q. Did you ever see the articles of which those are pictures, in Mr. Deslions' collection? A. I have seen some of them.

Q. What do you say as to the general character of the articles which Mr. Deslions had in his col-
5823 lection? A. I don't know that I can testify as an expert on that; I do know that Mr. Deslions had in his collection things which cost a great deal of money; because I did at that time—or previous to that time, most of Mr. Deslions' transactions passed through my hands, and I do know that he had objects which cost him from three to four hundred dollars up; but as an expert I could not testify.

Q. Do you remember any articles that you can specify as having cost those figures? A. I don't know that I can swear to any specific articles.

Q. Have you seen other Indian articles, such as
5824 are ordinarily bought and sold by people nowadays? A. Yes, I am familiar with those.

Q. What do you say as to whether his collection was of that class, or different? A. It was absolutely without parallel in my estimation.

Q. Have you seen other collections of such articles? A. Yes.

Q. What collections have you seen? A. I have seen the Smithsonian Institute, and have seen the collections in New York; I have seen a great many Indian things; in my opinion Mr. Deslions' articles were certainly unique.

Q. I show you a book in which is contained the 5825
list which was copied, *Bourgogne* Exhibit 2A; do you recognize that book? A. Yes, I do recognize that book; that is the book which was given by me to Mr. Deslions at the time he was in Fifteenth Street.

Q. Did you ever see it in his possession afterwards? A. I could not swear.

Q. Is there some of your handwriting in it? A. I don't think so.

Q. Do you know whether Mr. Deslions' collection increased from the time you first saw it until the end of it? A. It was constantly increasing, so I should presume it had increased; I don't know. 5826

Q. Did you know of its being sent on the *Bourgogne?* A. No, I did not.

Q. (Handing witness book.) That is some of your handwriting in this book, isn't it? A. Yes.

Q. It was shipped on the *Bourgogne* the first of July, 1898; how long before that had you seen it? A. Certainly not longer than ninety days; I wouldn't like to be absolutely precise in that statement; it was there or thereabouts.

Q. And the size of the collection at that time was as full as it had been? A. Oh, yes, it was increasing at that time.

Q. Did you know about the making of a photo- 5827
graph of a collection of Mr. Deslions? A. Yes, sir, that was made under my instructions; with my assistance.

Q. You had seen the pipes that were there photographed and knew that they were Mr. Deslions' pipes? A. Yes.

Q. How did the photographs come to be made? A. As I understood the matter they were giving an exhibition or smoker in a club of artists called the Kit-Kat Club, and they were going to have those

5828 pipes exhibited, and they asked for permission to have the photograph made, and it was given; and that was the result.

GORDON HOPE GRANT, being duly sworn and examined as a witness for Deslions, testifies:

By Mr. Benedict:

Q. What is your business? A. I am an artist.

Q. Where is your residence? A. 36 Washington Square west.

Q. Are you acquainted with Mr. Deslions? A. I have been there several years.

5829 Q. How long have you known him? A. Since 1897.

Q. What if any knowledge have you in reference to Indian curiosities and antiques of Indians? A. Well, for at least eight years I have taken an interest in Indian curios and curios in general, and always embraced the opportunity for looking at collections, and buying if I saw anything I wanted.

Q. What collections have you seen? A. I have seen the collection in the Metropolitan Museum and the Museum of Natural History, and one or two private collections.

Q. The Smithsonian? A. I have not seen the

5830 Smithsonian.

Q. Did you see Mr. Deslions' collection? A. I did.

Q. How frequently? A. Well, I suppose I have been in his place, the place where he was, as many as eight or ten times.

Q. Where was that place? A. If I remember correctly it was No. 73 South Washington Square.

Q. South, or west? A. South.

Q. How did you come to be there and see the collection? A. I met Mr. Deslions through Mr.

Haywood, and at his suggestion went to see Mr. 5831
Deslions' collection.

Q. What did you find was the position of the collection, as far as you saw it? A. I only saw one room, but it was very well filled with Indian relics and curiosities.

Q. Did you know that there were other articles which were not in that room? A. Well, inasmuch as Mr. Deslions had to go into another room and take out things from trunks and so on, for articles he had, I presume he had others.

Q. You knew that he got other articles that were not on the walls? A. Yes, that is what I mean.

Q. Can you mention any articles that you re- 5832
member to have seen there? A. Yes, I remember distinctly a very fine collection of pipes, and also four or five buffalo robes, some war bonnets, and a couple of quivers, and I think a mountain lion skin; and very small articles, such as scalps, scalp locks, and knives and tobacco pouches and tomahawks, and knife sheaths and bows and arrows and so on.

Q. Buffalo robes; tell me any particulars that you remember about the buffalo robes that you saw there? A. There was one that I remember most distinctly, as covered with picture writing; and although I know that there were four or five I 5833
can't fully recollect the peculiarities except that I know that they were very fine specimens.

Q. Do you remember a buffalo robe that had deer hoofs on it? A. I remember it now, since it is recalled to my attention.

Q. Do you remember any of the buffalo robes that were embroidered with porcupines? A. Oh, yes, one I remember distinctly.

Q. Was the deer hoof one embroidered with porcupine also? A. That I can't distinctly state.

5834 Q. Do you remember whether there was one of them with which Buffalo Bill was connected in some way? A. I remember a buffalo robe, one of these buffalo robes, that had Cody's name attached to it with a history of it.

Q. Do you know whether Mr. Deslions was acquainted with Buffalo Bill? A. I know for a fact that he was.

Q. How do you know that? A. In that Mr. Haywood and I received invitations to a Buffalo Bill show, from Mr. Deslions, and he told us at the time that he had got a box from Cody, and I know that at the show that we attended by that invita-
5835 tion Cody saluted the box, and he saluted Mr. Deslions.

Q. Do you know whether Mr. Deslions had acquaintances among the Indians that were connected with Buffalo Bill's show? A. Yes; after the show we were introduced to one or two of the Indian chiefs, through Mr. Deslions.

Q. Do you remember what year that was? A. That was in 1898, I believe, in April; I am not very sure.

Q. Have you traveled among the Indians out West? A. I have embraced opportunities in the seven or eight times that I have crossed the contin-
5836 ent of stopping off for half a day or a day at different places, and picking up things among the Indians.

Q. Are you familiar with the articles which the Indians ordinarily sell, which are for sale here? A. I consider myself a fair expert in Indian stuff.

Q. What do you say as to the character of Mr. Deslions' collection, as to whether it was of the ordinary Indian stuff or whether it was different, and in what respects, if it was different? A. I know that everything that Mr. Deslions had, with a few exceptions, were the very finest I have seen;

these exceptions being a few little things that I 5837
knew at the time he was anxious to get rid of, and which he didn't include in his collection at all.

Q. Do you know as to whether his collection was for sale? A. I know that when Mr. Deslions showed us anything it was only those things which he had in duplicate that he would sell, and several times he has said that he would not sell this, when any article was shown, until he got another and a better one, the object being to collect in time a unique collection.

Q. Are you sufficiently acquainted with the values of articles to place on these articles of Mr. Deslions' that you saw any values? A. Well, I 5838
have bought Indian stuff from different sources and paid prices which very much vary, that being of course on account of the owner's not knowing what he was selling.

Q. My general question was whether you had knowledge enough to put a value on things? A. I know that buffalo robes are getting more scarce every year, because the buffalo is extinct, and it is only when some collector wished to increase his collection that he finds these things on the market.

Q. Did you see any Aztec articles in this collection? A. I suppose there were articles of the Aztecs. 5839

Q. What do you remember about a collection of pipes? A. I remember that the pipes were very numerous, and considered a fine collection.

Q. Did you see much a collection as this photograph, Exhibit 1 of November 20th? A. I have seen this collection before; I believe almost in the same order in which they are displayed there.

Q. I show you also these other exhibits, No. 2 of November 20, No. 3 of November 20, and No. 4

5840 of November 20. A. I recognize all these articles, too.

Q. As having seen them in Mr. Deslions' collection? A. Yes, sir.

Q. I show you Exhibit 5 of December 1st; please tell what you know about that. A. I don't understand this exactly.

Q. Do you remember seeing any of the articles in the photograph there? A. I remember seeing a tent similar to this; but I couldn't swear that it was the same.

Q. On this Exhibit No. 4, I point you out a picture of a horse, etc., at the bottom; do you remem-
5841 ber what the article is that is photographed there? A. To the best of my recollection that is the robe, the buffalo robe that I mentioned before.

Q. You mentioned two or three; which one do you mean? A. The one which I said particularly had picture writing on it.

Q. The one that that came from Buffalo Bill? A. Well, I didn't say that I knew of any one in particular that came from Buffalo Bill; I knew that one did.

Adjourned to Tuesday, May 12, at two o'clock.

5842

NEW YORK, May 12, 1903. 5843

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT.

JOHN J. WHITE recalled for further examination:

By Mr. Benedict:

Q. Do you remember purchasing what was called a war bonnet from Mr. Riggs? A. I remember pur- 5844
chasing a bonnet of him, yes.

Q. Where was it bought? A. He was down at Wanamaker's.

Q. Do you remember when it was? A. About five or six year ago; I don't remember the date.

Q. Generally, what was the war bonnet composed of? A. Feathers.

Q. Did you show that war bonnet to Mr. Deslions? A. I did.

Q. Do you remember whether the bottom of it, to which the feathers were attached, was of felt? A. I don't.

Q. Do you remember what it was? A. No.

Q. Do you remember that on your showing it 5845
to Mr. Deslions he expressed an opinion to you about the bonnet? A. He said it was not a good one.

Q. As a result of the information you got from him did you exchange it? A. I changed it for a piece of pottery.

5846 GEORGE DESLIONS recalled in rebuttal:

By Mr. Benedict:

Q. Did you hear the testimony of the witnesses Poole and Marquet, called for the petitioner in this case? A. I did not.

Q. Weren't you here when they testified? A. No, sir, I was not here.

Q. Have you read their testimony since? A. I believe I looked it over, yes.

Q. Do you remember whether judgment was obtained against you in the Municipal Court on behalf of Mr. Marquet? A. I don't know; I was not
5847 in court.

Q. Do you remember an officer afterwards coming to your place with an execution? A. I remember that a man, or rather two men came to my place in Washington square; one said he was—I forget what he said he was.

Q. A marshal? A. I believe something like that; he said he was a marshal and asked me if I was Mr. Deslions; I said yes, I was; he said he wanted to see what I had in my place. I asked him what authority he had; what he wanted to do in my place; I told him I didn't know anything about it and he had better go out of the place.

5848 Q. What did he say he was there for? A. He said he wanted to look at what I had there in the place. I told him he had better go out of the place; I didn't know anything about that and he had better go out of the place. He had one man with him and he said to that man to go out of the room, that he wanted to talk with me, or with my wife.

Q. After the man had gone? A. After the man had gone; he didn't talk before. He said "I want you to go downstairs, I want to have a private talk with Mr. Deslions." He told him to go out, and

made a motion to him, and he went out. He said, 5849
"Now look here, I have a paper here; I am a marshal," or something like that; and he said "Marquet claims that you owe him some money." And he said "I don't care what he claims or don't claim"; he said "What are these things worth to you?" I said "They are worth nothing to you." He said "Well, it is foolish; let's talk that matter over." I said "I will have nothing to do with you," and he said "Now, Mrs. Deslions, I want to talk to you. Mr. Deslions didn't want to have anything to do with me, I will talk to you. Is the whole matter worth $10 to you to avoid all this trouble and all this and that?" And my wife said "George, what 5850
do you think I should do?" I said, "Do as you please; I will have nothing to do with that man." I said "Marquet has agreed to give me a month of free rent when I came here; in the first place I never had it, and in the second place he agreed to make lots of repairs, to fix up the gas, which we haven't got yet and this is several months from the fall to the spring, and we haven't got the gas yet. I had to buy some lamps and I had to put a shoe of iron in the place of the chimney in the parlor; and the same thing in the dining-room, and all this I consider that he owes me some money instead of me owing him some money." And she said "This 5851
man wants $10 and I will give him $10; I don't want any trouble," and she gave him the $10.

Q. And the man went away? A. And the man went away; but before the man went away he said "I will just leave this man for a bluff for a day or two in the front of the house at Marquet's expense." He said "Don't you mind him at all; he is just there for a bluff, and I will call him in a day or so." And that is all.

Q. Did you see the man about there for a day or two? A. I remember seeing the man there in front

5852 of the house, or rather not in front of the house; on the other side, near the square.

Q. Was Mr. Henry Marquet, the young man, there with the marshal? A. Do you mean at the time the marshal came?

Q. Yes. A. No, the marshal was alone with this other man and he told this man to go out of the place, for he wanted to talk to me.

Q. At that time who was present besides this marshal and the other man and yourself and Mme. Deslions; any one? A. Nobody.

Q. It has been testified that there was another person there who showed a bill of sale and claimed
5853 to own the property. A. Nobody was there; no, sir.

Q. Was there any bill of sale shown? A. Never.

Q. Was there any claim by anybody else to own the property? A. Never; there never was any such thing as a bill of sale.

Q. Do you remember whether the marshal ever came again? A. No, sir.

Q. What became of the property that was there when the marshal was there; what was done with it afterwards? A. When we went to the steamer that day—I went the day before to an auction room on the corner of Eighth street and University place, Mr. Bowe, and I asked him if he wanted to buy
5854 some furniture I owned, that I was going abroad with my wife and child and had no use for it any more; and he said "Yes, I will send a man there to look it over"; and he sent a man on Friday and he looked the stuff over, and I agreed for a certain price; I don't remember the price; but we accepted the offer.

Q. You sold it to him? A. I sold it to him, and he came on Saturday morning; we probably said that we wanted to use some of the furniture, to sleep, and to do some cooking with the cooking

utensils, and they came and got them on Saturday 5855
morning, and carried them to University place.

Q. That was done openly? A. It was broad daylight.

Q. Did you afterwards buy any of those things back from Mr. Bowe? A. After I heard of the disaster I wanted several pieces as a souvenir, which I have to-day; there is an old arm chair carved, and another chair, which I still possess to-day.

Q. You bought them back afterwards? A. I bought them back afterwards; I went to Mr. Bowe and I said "My wife died on the *Bourgogne*, and I want to keep several pieces as a souvenir," and I bought them back. 5856

Q. You said that you bought your ticket of Mr. Martin Gasse. Did you know, in that connection, of anybody by the name of Zwilschenbart? A. Yes, as I understand he was the agent who resides in Basle, Switzerland.

Q. Do you know him? A. Yes, personally; he is living in Basle, Switzerland.

Q. What connection, if any, has Mr. Gasse with him? A. He is the agent, or interested in some way in selling tickets for Zwilschenbart.

Q. You said before that your ticket was bought for Paris. Do you remember seeing the receipt for the ticket that was purchased here? A. I believe so. 5857

Q. Do you remember that that read "Basle" instead of "Paris"? A. Yes, I want to correct that; as I remember it the reason why, by taking the ticket to Basle it was cheaper than to take the ticket to Paris only; the reason that I said it was Paris was because we intended to go to Paris; that is why I was mixed in that; we were, from Basle, to go and see the parents, the mother and father and brother and family of my wife, and from there to come back to Paris; and after that we decided—this was in the beginning, when I intended to sail

5858 with her, and at the last moment we were to go to Paris. She was to go and see her parents and come back and meet me in Paris, and I would go back and see her parents.

Q. You said the trunks had been marked for Paris; was that correct, or were they marked "Basle" according to the ticket? A. I don't remember exactly; I believe they were marked for Paris —or Basle, I can't tell exactly; but I remember distinctly that I objected to that and wanted my trunks to remain in Havre.

Q. Whether it was Basle or Paris, that was what you wanted? A. Yes.

5859 Q. Mr. Faguet testified that after the loss of the *Bourgogne* you came to see him and that in that conversation you stated that you had a collection on board worth 25,000 francs; was that true? A. I never had such a conversation with Mr. Faguet.

Q. Did you have a conversation with him about a collection? A. I had a conversation with him about my collection, before the collection went on board the steamer.

Q. You testified before that when you saw Mr. Faguet after the loss of the *Bourgogne* he said to you that he was very sorry for you because you had lost not only your wife and child but this collection

5860 of yours; you had lost all your property. Now in that conversation did you say anything to him about the value of the collection? A. Oh, yes.

Q. What did you tell him was the value, in that conversation? A. I told him that the collection couldn't be duplicated, it was a great loss in a scientific way, as many of those articles were unique and couldn't be found at any price to-day, and that the collection was worth at least $50,000.

Q. Did you say in that conversation anything whatever about 25,000 francs as the value? A. Never, never; it would not occur to me to speak

about francs; I would have spoken of dollars with 5861
him.

Q. I show you Exhibit A for identification, April 13, 1903; tell me what that is? A. That is one of my business cards; the picture was made from an oil painting painted by Gustave Werbeck, who was an artist; he painted those articles after nature, in my place in Twenty-third street; in West Twenty-third street.

Q. And afterwards you had that photographed? A. Afterwards I had that photographed in Mr. Tonnele's place, a half-tone; and from that photograph two cuts were made, one of steel and one of copper.

Q. And that was printed on your business cards? 5862
A. That was printed on my business cards; this is one of my business cards; it was to give an idea of the articles of Indian curios used in a collection.

Q. What kind of articles were those that were there photographed, were they tourists' articles? A. No; the photograph itself shows they are rare articles, high grade articles; any man who knows something about that sort of thing will be able to identify those.

Q. I show you Exhibit 1, May 6, 1903; what is that? A. That is one of my business cards.

Q. Was that the ordinary form of your business card at that time? A. Yes, sir, it was.

5863

The two cards are offered in evidence; received and marked respectively Exhibit A and Exhibit 1 of this date.

Q. You heard the testimony of Mr. Riggs, called Captain Riggs? A. So-called Captain Riggs, yes.

Q. Did you see him in New Mexico? A. Yes, sir.

Q. Where? A. In Santa Fe.

Q. Do you remember what he was doing there? A. He wasn't doing anything; he was trying to sell a horse, two horses, with harness and a wagon

5864 at the time I met him the first time, and he finally sold them I believe, for $45; the two horses, harness, wagon and everything; he was with a man and a woman who had red hair; they were traveling together.

Q. You said that you brought a bill, or a letter, for him here; who gave you that bill or letter? A. Mr. Solomon Bibo, I believe the address is Laguna, New Mexico. He is a dealer in pottery and especially Mexican and Indian blankets.

Q. And he gave you this letter? A. Mr. Bibo sent me a letter saying in the letter if I would want to do him a great favor, which would be to find out
5865 where a man so called Captain Riggs was at the present time in New York, or where he was, as he was very anxious that the letter, which he enclosed in my letter, was remitted to him personally, and to be kind enough to let him know where I delivered this letter in the hands of the so-called Captain Riggs.

Q. Did you deliver the letter to Captain Riggs? A. I did, in Wanamaker's.

Q. And did you communicate to Mr. Bibo about ti? A. I sent a note to Mr. Bibo saying that I had remitted that letter personally to this man so-called Captain Riggs, at Wanamaker's store in New York City.

5866 Q. Captain Riggs says that he visited your place at one time. A. He did, yes, sir.

Q. Is that a fact? A. Yes, he visited my place.

Q. Did he ever visit it more than once? A. Only one time.

Q. Do you remember what time that was? A. Yes, I do.

Q. When was it? A. It was a Sunday morning.

Q. How do you remember that? A. For two reasons; one of the reasons was that my friend, Mr. D. D. Ally, had an appointment with me that very

Sunday to take me on a wheel to go and have a ride 5867
from New York to Yonkers, where he lived. The reason I remember it because Mr. Ally was at the time a partner and first operator with Mr. Walter Tonnele, and was only free on Sunday.

Q. Was Mr. Ally there when Riggs came? A. And a further reason I remember it was a Sunday was because when I saw Mr. Riggs he specified that the appointment should be made only on Sunday because he was to be at Wanamaker's store the whole week and could not possibly call during the week days, and that the appointment should be Sunday, at the request of Mr. Riggs.

Q. Was Mr. Alley there when Riggs came? A. 5868
Yes, sir.

Q. How long did Riggs stay there that morning? A. Mr. Riggs stayed there about ten to fifteen minutes.

Q. What was the business that he came there about? A. Mr. Riggs came to see some Indian trinkets, some small articles that I had received with the collection, that I purchased before, and I had no use for those articles, and Captain Riggs expressed his wish to buy such articles, as he was specially dealing in that line when he was in Wanamaker's, and I proposed to exchange them for some baskets which I saw at Wanamaker's. 5869

Q. Did you make the exchange that Sunday? A. We concluded that Sunday that I should carry those small articles, which were composed of little beaded pouches and small scabbards and moccasins, that I should carry them in a satchel on Monday morning before the people would come, and exchange them for some baskets.

Q. Did you do so? A. I partly exchanged them, because Mr. Riggs didn't want to keep his word with me; I exchanged part of them.

Q. Was it possible for Mr. Riggs, in the time

5870 that he was there, to have made any valuation of the collection that you had? A. It was absolutely impossible, because when he came in the room he said that he was troubled with tobacco heart and he thought I was living very high, and he fell in an arm chair near a window and requested that I should open the window to give him some air; I offered him some whiskey; there was some liquor on the table, and he said no, and I offered him a smoke, and he said no, he didn't dare touch it, because he had a tobacco heart.

Q. Did he stay in that place? A. He stayed in that place till he went out; he didn't move from
5871 that at all, the whole time was probably fifteen minutes.

Q. And after he left what did you and Alley do? A. After he left we had something to eat; some steak and some coffee, and I forget what, and we started on our journey to Yonkers on the wheels.

Q. Mr. Riggs said that you had no real scalps there; that there was a discussion between you and him as to whether something that was a scalp was genuine; did any such thing occur? A. No, sir, we didn't have any such discussion; the only discussion we had, Mr. Riggs said "Did you read the paper this morning," and I said "No, sir," and he
5872 said "Well, there is an article on blankets, which you don't want to miss"; I said "By whom is it," and he said "It is by me; I wrote it," and I said "All right"; and he said "By the way, you have a beautiful pair of Japanese portieres there," and I said "You are very much mistaken; those portieres are Indian blankets, but not Japanese," and he said "Well, that is so; my eye—I don't see quite so well; I couldn't see from here, it is too far." And I saw that he made such a mistake as a child wouldn't be allowed to make.

Q. Do you remember any conversation with him about scalps? A. No, sir. 5873

Q. Did he say that in looking at some scalps that you had that he didn't believe they were genuine? A. No, sir, that was the only conversation that I had with him, was in regard to that blanket, and I was so disgusted that I didn't want to have any conversation with him.

Q. Were those scalps genuine? A. Certainly.

Q. Mr. Keppler I think spoke of having bought a scalp of you? A. Yes, I sold some parts of scalps to him; not the whole scalp; part of a scalp that was in poor condition.

Q. He also testified to your showing him at some time a collection of photographs; was that before or since the loss of the *Bourgogne?* A. That was after the loss of the *Bourgogne,* I bought those photos in exchange from a gentleman by the name of Joseph Imhoff; that was two years after the loss of the *Bourgogne* that I offered him those photos. 5874

Q. Mr. Keppler said that you showed him on one occasion some Iroquois masks; did you show Mr. Keppler any such masks? A. Probably I did; I had many.

Q. And he said you asked $15 apiece for them; is that correct? A. I don't remember; there is different prices for masks, according to the masks. 5875

Q. Were those that are in this collection offered for $15 apiece? A. Oh, no, never; that collection was not to be sold at any price.

Q. He says you showed him an Indian saddle; did you show him any Indian saddle and put a price upon it that belonged to this collection? A. None at all; if there was anything that was offered to him it was some duplicated articles.

Q. Was that true with reference to bear claw necklaces and tomahawks? A. The same thing;

5876 in a bear claw necklace the price is entirely according to the length of the claws and the quantity.

Q. Mr. Keppler says that you put a price upon some squaw dresses, he don't know how many, you put a price averaging from $20 to $30 or $40; did you put any such price on these? A. Not of my recollection, no; it was certainly not any squaw dress that belonged to my collection.

Q. He says that he saw ten or fifteen strings of wampum necklaces and that they were a dollar a string; was that correct? A. He must be mistaken on that.

Q. Mr. Yoste tells of having appraised a collec-
5877 tion belonging to Lieutenant Wheeler. Did you buy some things from Lieutenant Wheeler? A. I bought his entire collection.

Q. How many articles were there? A. Oh, I don't remember; quite a number; may be—I couldn't tell how many; quite a number.

Q. Ten, fifty? A. I couldn't tell exactly; I remember there was a squaw dress; there was a couple of war shields; there were several tomahawks; war clubs, there were some pipes, there were some old bows and quivers.

Q. What was the fair value of what you bought from Lieutenant Wheeler? A. Those articles
5878 couldn't be estimated, some of them were very rare; they were old and very rare; they couldn't be estimated; they were worth a great deal; some of those articles were unique.

Q. Yoste says he valued it at $150? A. Mr. Wheeler told me that he wouldn't sell his collection for such a ridiculous sum which was offered to him by a man called Yoste in New York. I answered him that his own price would be mine; that I would accept his figure.

Q. Did you take them at his figure? A. Yes, sir.

Q. Do you remember what it was? A. I don't

recollect; I had been looking after that collection 5879
to purchase it for many years, and I was very anxious to secure it.

Q. Mr. Yoste speaks of rattles and given on page 640 a description of a three-dollar rattle (Mr. Benedict reads the description referred to). He says he wouldn't sell it for what he bought it; can you tell from that description what kind of a rattle it was? A. No, sir; absolutely impossible; I couldn't tell anything about it.

Q. Was that any such kind of a rattle as you had in your collection? A. The rattles which I had in my collection were what is called medicine men's rattles. 5880

Q. (Repeated.) A. No, sir.

Q. Are the mound builders understood to be Indians? A. No, sir.

Q. Are collections of articles by mound builders included in Indians' collections? A. No, sir.

Q. Did you have some in your collection? A. Yes, I had some pipes and I even studied the mound builders.

Q. What articles did you have in your collection which were mound builders'? A. Pipes only; that is about the only articles that are found to-day from the mound builders.

Q. Mr. Riggs says that a Mexican sombrero is 5881
worth about a dollar and a half to five dollars; were the sombreros that you had anything like that? A. No, sir.

Q. What was the peculiarity of yours? A. They were trimmed with silver ornaments, with a Mexican eagle under the brim and on top of the brim they had a snake going around the corner of the head four or five times, of silver. One had a buffalo head one side made of silver, and the other side it was a pony.

5882 Q. These drums that you had in your collection, were they ceremonial drums? A. Yes.

Q. How do you know they were? A. I know they were ceremonial drums the way they were made and the way I obtained the drums. They were hollowed from a tree and covered with a buffalo hide; both sides.

Q. How does that show that they were ceremonial? A. I know they were ceremonial, because the man who sold them to me, who was himself a half-breed Indian, succeeded in bribing some medicine men and had those drums stolen or taken away from the tribe; those drums are the property of the
5883 tribe; they are not individual property, and very rare.

Q. How do they differ from the ordinary drum? A. The ordinary drums are generally made from the commercial line of cheese boxes or something like that; but they are not fit for collections; it is all right for a souvenir, but for a collection they are not fit.

Q. You heard Mr. White's testimony given today? A. Yes, sir, I did.

Q. Did Mr. White show to you the bonnet that he testified about? A. He did; in his house.

Q. What kind of bonnet was it? A. It was a
5884 bonnet made of turkey feathers, and they were strung around the corner of a soft felt hat, and he gave me the bonnet and asked me how much I thought it was worth; I said to a collection it is worth absolutely nothing; in fact it would look ridiculous to have such an article placed in a collection. "If you are to use that bonnet at a masquerade ball I presume it is worth about a dollar for the wearing of it;" he asked me why, to give him some explanation, and I said "No Indian would have a war bonnet made of turkey feathers, for the reason that the turkey was, among the Indians an

emblem of cowardice, and no Indian would wear a 5885
bonnet on his head made of turkey feathers, because it would be an emblem that he would be a coward himself." On the contrary, they were all made of the war eagle feathers; white with black tips, which is the emblem of courage.

Q. Do you know whether Mr. White did exchange that bonnet afterwards? A. Yes, he said that he was going to exchange it.

[TESTIMONY IN THIS CASE CLOSED.]

Adjourned to Wednesday, May 20th, at 2 P. M.

5886

NEW YORK, May 20, 1903.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
R. D. BENEDICT, Esq., for Deslions,
CHARLES HALDANE, Esq., for petitioner

Mr. Haldane: I had notice yesterday on my return that there is a memorandum on the minutes of the last meeting that the testimony in this case is closed.

5887

I desire to make a notion to reopen it, but I cannot make it to-day because I am not able to get an affidavit from Mr. Jones to-day, but by to-morrow I can, and I ask Mr. Benedict to consent that we have an adjournment to-day for to-morrow instead of to-day as noted in the record, in order to have an opportunity to make my motion.

I will state to the Commissioner that I have just returned from Santa Fe, which I have been investigating Mr. Des Lions, and I think that as a result of my trip there are things that the Commissioner

5888 would wish to know and which ought to be known in this case; and for that reason I make the motion for the adjournment, to furnish the necessary affidavits.

Mr. Benedict: I cannot consent.

The Commissioner: As it stands, the claim of Mr. Deslions is closed. You wish to make a motion to reopen it?

Mr. Haldane: Yes.

The Commissioner: I will fix to-morrow at any hour you gentlemen may agree on to entertain that motion.

5889 Adjourned to to-morrow, Wednesday, May 21, 1903, at 2 P. M.

NEW YORK, May 20, 1903.

Present—THE COMMISSIONER,
R. D. BENEDICT, Esq.,
MESSRS. ALEXANDER & COLBY,
MESSRS. BULLOWA & BULLOWA,
E. K. JONES, Esq., by Mr. KOPF.

Mr. Kopf: With respect to the claim of the S. S.
5890 White Dental Company, the petitioner offers no proof, except that it will refer to the testimony taken at the trial of the issues in this case.

With respect to the claim of Enrico Cirre and Louis Del Fonte, represented by Messrs. Bullowa & Bullowa, the petitioner has no proof to offer, except that it will refer to the testimony taken at the trial.

With respect to the claims of W. C. Perry, Administrator, and John Perry, father and next of kin of Catherine Perry and Albert Perry, represented by A. Gordon Murray, the petitioner has

no proof to offer except that it will refer to the tes- 5891
timony taken at the trial of the case.

With respect to the claim of Pauline Henuy, administratrix of Juliette Cicot, the petitioner offers in evidence a certified copy of the decree of the Surrogate's Court of the County of New York on the final accounting of the administratrix, and as I have not brought it with me, I will send the copy to Mr. Benedict to be examined, he reserving the right to interpose such objection as he may wish to offer.

With respect to the claim of Henry Hyer Knowles, as administrator of Gertrude Lalla Rookh Knowles, the petitioner has no proof to offer 5892
except that it will refer to the testimony taken on the trial of the case.

By direction of the Commissioner the time for filing briefs or making arguments in the respective claims will be settled at the adjourned meeting in the case of the Deslions claim, to be held Wednesday, May 21, 1903, at 2 P. M.

NEW YORK, May 21, 1903.

Met pursuant to adjournment. 5893

Present—THE COMMISSIONER,
MR. BENEDICT, for George Deslions,
MR. HALDANE and MR. KOPT, for petitioner.

Mr. Haldane proposing to refer to affidavits on his motion to reopen the case, Mr. Benedict objects on the ground that he has not been served with copies of any affidavits.

The Commissioner: If Mr. Haldane wishes to

5894 make the motion on papers that have not been served on Mr. Benedict, and Mr. Benedict objects, I will allow further time to make the motion and serve the papers. Will two o'clock to-morrow afternoon be satisfactory?

Mr. Benedict: I have not seen the affidavits. I cannot tell whether that is time enough. If your Honor adjourns it to to-morrow I will try and be here to-morrow at two o'clock.

Mr. Haldane: We will serve the papers on Mr. Benedict this afternoon.

Adjourned to to-morrow, May 22, 1903, at 2 P. M.

5895

NEW YORK, May 23, 1903.

Met pursuant to adjournment.

Present—THE COMMISSIONER,
MR. BENEDICT,
MR. HALDANE.

Mr. Benedict: I was served yesterday afternoon at five o'clock with a bundle of papers; none of them were sworn to, but I suppose the originals were sworn to.

Mr. Haldane: I produce the originals, sworn to.

5896 Mr. Benedict: On examining them I found, as part of them, an affidavit of Mr. Deslions, and stenographer's minutes of some testimony given by him in the year 1901, three years after this affair took place, in a certain proceeding in a suit in which a man by the name of John McGosh was defendant.

On examining those papers I find that there is not an allusion in them to this case in any way, shape or form; and Mr. Haldane puts in his affidavit that he wishes to introduce those in evidence. I think he must know enough of law to know that those papers, if there was any opportunity,

wouldn't be admitted as evidence at all, and it 5897
seems to me, therefore, an attempt of counsel to get in an indirect way, before the Court, matters that wouldn't be allowed to be admitted directly.

If those papers are to go before the Commissioner at all I desire an opportunity to furnish affidavits to meet them, and for that purpose I shall have to ask for an adjournment, till a week from Monday, because I am going out of town on Tuesday, and I shall not be back till Saturday. If those papers are withdrawn from these moving papers, then I am ready to go on with the motion now.

Mr. Haldane: You can't pass on the question as to whether they are properly introduced, in that 5898
way.

The Commissioner: I understand the motion to be simply a motion to reopen the case as to this claim and for permission to put in further evidence.

Mr. Haldane: Yes, it is a motion to resume the examination.

The Commissioner: And these are papers upon that motion?

Mr. Haldane: Yes. There is no way to get rid of any part of my moving papers. They may be wrong. Assuming that I ought not to have put them in, they have got to go before the Commissioner. I am 5899
not here to argue whether the facts are admissable. That comes up on the motion.

Mr. Benedict: It will not be denied that this is the affidavit of Mr. Deslions, and his testimony in another case three years after this occurrence, in which there isn't a word that relates to the present case.

Mr. Haldane: That is one of the most significant features about it. Deslions was sworn, and examined at length as to his history, and there isn't a word about any Indian curios about it.

5900 The Commissioner: If Mr. Benedict wishes an opportunity to prepare affidavits for use on the argument of this motion, he shall have that opportunity.

Mr. Haldane: I am not in a position to refuse any request that Mr. Benedict makes. I have been away from this Court too long to make any objection, about suiting Mr. Benedict's convenience.

Mr. Benedict: It is not a matter of convenience; it is a matter that is fair to me.

Adjourned to Tuesday, June 2, at 3 P. M.

5901

NEW YORK, June 2, 1903.

Met pursuant to adjournment; all the parties being present as heretofore stated.

Counsel for petition moves to reopen the case for the purpose of taking further testimony.

After the reading of affidavits and argument by counsel for petitioner and counsel for claimant, the motion is denied.

Adjourned for the summing up to Monday, June 29, 1903, at 2 P. M.

5902 August 3, 1903.

Mr. Merrian, of office of Alexander & Colby, in behalf of Knowles claim, presents notice of motion to reopen testimony, with proof of service.

He offers in evidence the original letters of administration granted to Mr. Knowles on his wife's estate.

Same received and marked Ex. 1 of Aug. 3, 1903.

[CLOSED.]

NEW YORK, June 29, 1903. 5903

Met pursuant to adjournment.

Present—THE COMMISSIONER,
R. D. BENEDICT, Esq., for the Claimants.
CHARLES HALDANE and FREDERICK KOPF, Esqs., for the petitioner.

Mr. Haldane again offers in evidence certified copy of record from the Municipal Court in the case of Marquet v. Deslions.

5904

Objected to on the ground that it is not a complete copy, no account being taken of the pencil marks which appeared upon the original when produced before the Commissioner.

The Commissioner: Notwithstanding the certificate I cannot take this paper as a substitute for the paper that was produced before me, as we know it is not a complete copy.

I will give you leave to introduce the original and make a certified copy conforming to it as nearly as can be done.

Counsel thereupon summed up the case.

5905

NEW YORK, June 2, 1903.

Met pursuant to adjournment, all the parties being present as heretofore stated.

Mr. Haldane: If Your Honor pleases, I find on my return from the west that the record shows, on the 12th of May, 1903, that there was no person present on behalf of the petitioner, and there is a

5906 memorandum to the effect that the testimony is closed.

I produce the affidavit of Mr. Kopf showing that on that day Mr. Jones and he were both in Boston taking testimony in the case of the Keasby & Mattison Co. vs. The Philip Cary Manufacturing Co.

The Commissioner: The trouble is that neither Mr. Kopf nor anybody else paid any attention to the hearings before me for three or four different sessions, until I got tired of their neglect. About an hour after I had closed the petitioner's evidence, I received a telegram from Mr. Kopf notifying me that he was in Boston. He did not communicate
5907 with us beforehand; and it was not merely that time, but it was at other hearings that no regard was paid until I finally made up my mind that he had gone far enough in his neglect and closed the matter. If any person had come before me and stated that you were off west and taking testimony and could not attend and that nobody was there that could go on with the case, his application would have received consideration. But they evidently seemed to feel that their absence was sufficient reason for nothing being done. At the next session when Mr. Kopf did appear before me, he started in by wishing me to enter into a stipulation
5908 with him reserving his rights for any motion he chose to make and on my refusing to do so he simply withdrew, indicating to Mr. Benedict as he left the room, "Mr. Benedict proceed and run the case." I considered it very disrespectful to me and was very much disgusted with the treatment I received.

Mr. Haldane: That part of it is not within my control or knowledge except as you have stated it to me. This evidence that I specially went to gather——

The Commissioner: Are you in a position to offer it now; I don't mean to-day?

Mr. Haldane: I am in a position to offer the affi- 5909
davits of the parties on a motion to reopen. We would have to take the testimony by commission of the people who live in Santa Fe, for I can't produce their affidavits of course, except for the sake of the motion.

The Commissioner: I have no power to grant an application for a motion.

Mr. Haldane: But there is no use of my applying to the Court for it if the testimony is closed. I would have to get it reopened or the Court would not grant me permission.

The Commissioner: Is there any evidence other than that which you wish to take by commission 5910
which you wish to introduce here?

Mr. Haldane: Yes, sir; I have a very valuable witness that I must admit might have been produced and examined in my absence. It was apparently thought that I ought to examine this witness in this case as I ought to be more familiar with this witness and his testimony than anybody else. Still in an emergency I presume he could have been examined. He is Mr. Barnes, the manager of the Hyde Exploration Exhibit on Twenty-third street.

Mr. Benedict: That is not alluded to in the affidavits.

Mr. Haldane: I do not rely upon that. I want 5911
to make a good motion. I don't want to urge this motion because there are witnesses in New York that I can produce because I may be met with the answer at once—You ought to have produced that witness. I want to reopen on the strength of the testimony that I can produce in Santa Fe, New Mexico.

The Commissioner: How long a time do you want?

Mr. Haldane: I want time to apply for a commission. Further than that I show by affidavits

5912 that on the 20th of May, the day that I was here to make this motion, by the merest accident which no amount of foresight could have provided against, I discovered evidence which I will outline here. I don't want any favors that ought not to be granted to a litigant, of course, but I still insist upon the hardship the closing of petitioner's case gives here.

The Commissioner: I am very reluctant to cut any man off who has testimony to offer, but it seems to me that somebody ought to have given a little more attention to this case while you were away. A motion for a commission will, of course, have to be made to the Judge.

5913 Mr. Haldane: Will you so far open the case as to give us an opportunity to apply for that commission? Do you deny——

The Commissioner: Yes, I will reopen it for that.

Mr. Benedict: I submit, Mr. Commissioner, that you ought not to grant any motion of that kind without hearing me. I am entitled to have something to say on this question.

The Commissioner: Make your statement, Mr. Benedict.

Mr. Haldane: Mr. Benedict simply wants to be heard against the propriety of granting the motion

5914 generally.

I do not care to argue this motion. If you, Mr. Commissioner, are going to consider it not exactly on the papers, but as a matter of fairness to the parties, there is no use of my taking an hour to argue the details of the motion. The papers will be filed and you will endorse your decision upon them. I do not care to go into them all.

Mr. Benedict: I submit that we should know what papers are offered here. You have not stated that you offer any.

Mr. Haldane: You have copies of them.

Mr. Benedict: You have not offered anything to 5915
the Commissioner.

Mr. Haldane: I have stated the substance of Mr. Kopf's affidavit. I will read mine and that of Jake Gold.

(Counsel reads the affidavits.)

Now, Mr. Commissioner, when you bear in mind that Santa Fe is the only place as to which and as to his transactions there, that we have been able to get any details or any particulars from the claimant in this case and when it is absolutely impossible that his story as to the size and value of his collection at Santa Fe and as to his operations 5916
there can be reconciled with the testimony of these witnesses, I think we ought to be given an opportunity to test his credibility in that way, because that is a very important question in this case. The claimant has this claim shut up in his fist. All he says is he had goods and he lost them. We are bound to trace them and see where he got them and what his collection was at a certain day, and if we show that he is not telling the truth, that is the best defense we can make to this claim; in fact the only defense we can make to this claim is to follow this claimant and see whether he tells in court a true story.

Counsel then read various papers and further 5917
argued this motion, at the conclusion of which the motion was denied, and all the cases set down for hearing on June 29th, 1903, at 2 P. M.

5918 **Summons.**

MUNICIPAL COURT OF THE CITY OF NEW YORK,

BOROUGH OF MANHATTAN—THIRD DISTRICT.

LOUIS MARQUET,
Plaintiff,

AGAINST

5919

GEORGE DESLION, whose true Christian name is unknown to the plaintiff, the first name George being fictitious,
Defendant.

To entitle this cause to a favorable position on the calendar this Summons must be returned to the Clerk's Office, and the trial fee paid, at least one day before the return day.

5920 THE PEOPLE OF THE STATE OF NEW YORK, TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to appear in this action, before one of the Justices of the Municipal Court of the City of New York, Borough of Manhattan, Third District, in the Court at the Court Room thereof, on the southwest corner of Sixth avenue and West Tenth street (second floor), in the City of New York, on the 23d day of June, 1898, at 10 o'clock in the forenoon, to answer the complaint of the plaintiff in this action, who, if

you then fail to appear and answer, will take judg- 5921
ment against you for the sum of forty-four 00/100 dollars, with interest from the day of , 190 , besides the costs of this action.

Dated New York, June 15th, 1898.

DANIEL WILLIAMS,
Clerk.

(Endorsed) — Certified Copy, etc. — Municipal Court of the City of New York, Borough of Manhattan, Third District. — Vol. , Marquet agst. Deslion. — Fol. 516, Claim $44.00. Ret. the 23rd day of June, 1898, at 10 A. M.—Judgment for the Plaintiff, For 5922
Damages, $44.00; for Costs, $5.22; for allowance, ——. Amount, $49.22.—Plaintiff appeared in person.—Complaint for Rent.—Defendant apeared by wife.—Answer admits Indebtedness.—Adjourned to Dated 23d day of June, 1898.—William F. Moore, Justice.

Execution against the Property.

THE PEOPLE OF THE STATE OF NEW YORK, TO ANY MARSHAL OF THE CITY OF NEW YORK, GREET- 5923
ING:

Whereas, judgment was rendered on the 23d day of June, one thousand eight hundred and ninety-eight, in an action in the Municipal Court of the City of New York, Borough of Manhattan, Third District, before Hon. William F. Moore, one of the Justices of the said Court, between Louis Marquet, plaintiff, and George Deslion, defendant, in favor of the said plaintiff against the said defendant, for the sum of $49.22,

And whereas, the sum of forty-nine 22/100 dollars is now actually due thereon;

Therefore, we command you, that you satisfy the said judgment by collecting the amount due thereon, together with your fees, out of the personal property of the said defendant within your county, not exempt from levy and sale by virtue of an execution and pay the same to the party entitled thereto; and return this execution within twenty days after its receipt by you, to the said Municipal Court, with a certificate thereon endorsed stating the manner in which you have executed the same.

Witness, Hon. William F. Moore, one of the Justices of said Municipal Court, of the City of New York, Borough of Manhattan, Third District, the 23d day of June, one thousand eight hundred and ninety-eight.

DANIEL WILLIAMS,
Clerk.

(Endorsed)—Municipal Court of the City of New York, Borough of Manhattan, Third District.—Vol. , Marquet, Plainitff, against Deslions, Defendant.—Fol. .—Certified Copy.—Execution against the Property, $49.22.—Thereby levy on 3 chairs, 3 , 1 table, 1 lamp, 6 , 4 , 1 Bureau, 1 couch, 1 stand, 7 Patterns, 1 room, 1 lot of antiques.—Returned unsatisfied.—Wm. A. Moss, City Marshall.—New Ex. June 27/98.

Execution against the Property. 5927

THE PEOPLE OF THE STATE OF NEW YORK, TO ANY MARSHAL OF THE CITY OF NEW YORK, GREETING:

Whereas, judgment was rendered on the 23d day of June, one thousand eight hundred and ninety-eight, in an action in the Municipal Court of the City of New York, Borough of Manhattan, Third District, before Hon. William F. Moore, one of the Justices of the said Court, between Louis Marquet, plaintiff, and George Deslion, whose true Christian name is unknown to the plaintiff, the name George being fictitious, defendant, in favor of the said 5928 plaintiff against the said defendant, for the sum of $49.22,

And whereas, the sum of forty-nine 22/100 dollars is now actually due thereon;

Therefore, we command you, that you satisfy the said judgment by collecting the amount due thereon, together with your fees, out of the personal property of the said defendant within your county, not exempt from levy and sale by virtue of an execution, and pay the same to the party entitled thereto and return this execution within twenty days after its receipt by you, to the said Municipal Court, with a certificate thereon stating the manner in which 5929 you have executed the same.

Witness, Hon. William F. Moore, one of the Justices of said Municipal Court of the City of New York, Borough of Manhattan, Third District, the 27th day of June, one thousand eight hundred and ninety-eight.

DANIEL WILLIAMS,
Clerk.

(Endorsed)—Municipal Court of the City of New York, Borough of Manhattan, Third District.—

5930 Vol. , Fol. .—Marquet, Plaintiff, against Deslion, Defendant.—Certified Copy of Execution against the Property, $49.22.—Not found. Unsatisfied.—Sam. Abraham, Marshall.

Certified Copies of Summons, &c.

MUNICIPAL COURT OF THE CITY OF NEW YORK,

BOROUGH OF MANHATTAN—THIRD DISTRICT.

5931

LOUIS MARQUET,
Plaintiff,

AGAINST

GEORGE DESLION, whose true Christian name is unknown to the plaintiff, the first name George being fictitious,
Defendant.

5932

STATE OF NEW YORK,
City and County of New York, } ss.:

I, DANIEL WILLIAMS, Clerk of the Municipal Court of the City of New York, Borough of Manhattan, Third District, do hereby certify, that the annexed are true copies of a Summons and two Executions in the above-entitled action, the judgment in which was filed in my office on the 23d day of June, 1898.

In witness whereof, I have hereunto subscribed 5933
my name and affixed the seal of the said Court, this
20th day of February, 1903.

DANIEL WILLIAMS,
[SEAL.] Clerk.

(Endorsed)—Municipal Court of the City of New York, Borough of Manhattan, Third District. Marquet against Deslion.—Certified Copies of Summons and Executions, &c.

Petitioner's Exhibit 2 for Identification, October 6, 1902. 5934

Petitioner's Exhibit 3.

	Collection of Indian photos (500) old and rare	$250
10	Collection of Indian Medals	250
1	Collection of Indian Pipes	3,000
	Other Collections of pipes from every part of the world	300
	Collection of arrow heads (600 pieces)	500
10	Indian dells, complete, very rare	50 5935
10	Astek Masks, (obeedien & serpentine)	50
	Several Indian books, old and rare	300
2	Buckskin Mexican suits complete, silver trimming	100
2	Mexican sombreros, silver band and trimming	60
2	Pairs of Mexican eperons, solid silver.	200
2	Pairs of Mexican eperons, iron very old	50
2	Mexican bridles, silver ornaments	200
2	Mexican saddles	100

5936	2	Mexican leather trunks, old carved leather	100
	3	Peruvian Momies	900
	4 or 5	Peruvian Heads Momified, 150, 125 apiece	500
	20	10 Indian Masks (Wood)	200
	20	10 Serie Alaska Masks (Wood)	200
	6	Serie of 25 Indian Rattles (snaping turtle)	250
	6	2 Alaska Rattles (wood carved)	100
	2	Indian Drums (ceremonial)	75
	20	10-120 Indian War Clubs, stone, $15 to $20 aiece	300
5937	20	12 Tomahawks (iron, copper) 100-150-35-50	500
	2	Tomahawks (stone, old)	100
	40	Indian shields, buffalo raw hide	4,000
	40	War bonnets, Eagle feathers, 2,500-3,000	1,200
	40	War shirts, buck skin, embroidered with porcupine and trimmed with scalps 100 and more apiece	5,000
	20	Ghost shirts 20 to 25 dollars apiece	200
	15	Scalps	1,000
	42	10 pairs of leggins	500
	200	250 or 300 pairs of moccasins, $5 or $6 a pair	1,000
5938	2	lances, with eagle feathers and scalps, $1,600; apiece $100	700
	50	2 Dancing stick with eagle feathers and medicine	250
	22	20 Dancing belts, trimed with porcupine	500

Petitioner's Exhibit 1 for Identification, October 2, 1902. 5939

80	tobacco pouches	$2,000	
30	20 Game bags $25	500	
20	10-12 Saddle bags $50 one	650	
2	Tents	100	
8	4 Indian woman complete suits	1,000	
5	2 Indian boys complete suits	750	
4	Indian girl complete suits	600	
10	Indian chief complete suits	3,500	
1	Indian chief complete suits extra	2,500	
2	Cow Boys complete suits	50	5940
2	Cow Girls complete suits	50	
4	Indian Saddles	150	
6	Scalping Knives with scabbard	50	
22	Very fine bows, quivers, arrows	500	
20	Indian Blankets (selected)	1,000	
2	Buffalo Robes (large)	150	
5	Buffalo Skins Painted	1,000	
15	Gun Cases	500	
2	Wampum belts	200	
10	Iriquois schels, necklaces, caring, large schels	150	
6	elk teeth necklaces	1,300	
13	Wampoon necklaces	500	
15	Deerhoofs necklaces	300	5941
4	Grizli bear claw necklaces, 5 to 6 inches each claw	200	
2	Human teeths necklaces	100	
8	Specimens Indian Creadles	300	
2	Saddle Cloth	75	
1	Buffalo skull, extra large	25	
8	Pairs Buffalo Horns, extra large	50	
32	Alaska spoons (carved)	100	
8	Indian Horns spoons	20	
1	Indian skull, flated head	100	

5942	1	Indian woman complete suit trimmed with 250 elk teeths	250
	2	Buffalo Skins embroded with porcupine and trimmed with 250 deer hoofs, very rare speciment.....	750
	35	Indian Blanket Belts embroded	300
		Collection of South Sea Island 200 implements, etc.	2,000
		Lances, clubs, masks, idols, carved paddles, Australian Clubs & Boomerang	200
		African, Sagans, lances, clubs, masks.	1,000
5943		Egyptians scarabies, coins, medals, ivory, carving, photos, apparatus, oil paintings, portraits, engravings, miniatures, etc.	3,500
	2	teepe	150
	1	Council pouch.....	50

5944

In issuing this transcript of Record, the Department of Health of The City of New York does not certify to the truth of the Record transcribed. The seal of the Board of Health attests only the correctness of the transcript, and no inquiry as to the facts reported has been provided by law. 5945

New York, Oct. 18, 1902.

A Transcript from the Records of the Births Reported to the Department of Health of The City of New York.

City of New York.

State of New York. No. of Certificate 4593

Certificate and Record of Birth of

Name of Child.....Deslions

Name and address of person making this Report, Signature.....S. L. Broadhead, M.D., Residence.....Sloan Mat. Hosp.

Date of Report.....190

Name	Deslions
Sex	Female
Color	White
Date of Birth	Jan. 26, 1897
Place of Birth	Sloane Maternity Hosp.
Father's Name	George Deslions
Residence	13 Hancock St.
Birthplace	France
Age	31
Occupation	Photographer
Mother's Name	Matilde Deslions
Mother's Name before Marriage	Matilde Faevre
Residence	13 Hancock St.
Birthplace	France
Age	26
Number of previous Children	1
How many now living in all	1
Date of Record	1/29/97

Eugene N. Scheffer, Chief Clerk.

5946

5947

[seal]

5948 U. S. DIST. COURT.

IN THE MATTER

OF

The Petition of the Com. Gen. Trans., owners of the "BOURGOGNE."

5949 The application of the petitioner for leave to open the case before the Commissioner coming on to be heard and counsel having been heard, it is

Ordered, that the petitioner have leave to produce and examine before the Commissioner at the hearing before him on June 29, Jake Gold, with leave to the claimant Deslions to give on that day opposing evidence.

In all other respects the application of the petitioner is denied.

June 20, 1903.

EDWARD B. THOMAS,

U. S. J.

5950 (Endorsed)—Order Allowing Petitioner to Examine Jake Gold, &c., and Denying Petitioner's Application to open case, except as above.—Filed Oct. 29, 1903.

UNITED STATES DISTRICT COURT, 5951

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability. 5952

The above-named petitioner hereby excepts to the order of this Court, made and filed herein on the 20th day of June, 1903, directing that the petitioner have leave to produce and examine before the Commissioner at the hearing before him on June 29th, Jake Gold, with leave to the claimant Deslions to give on that day opposing evidence, and denying in all other respects the application of the petitioner for leave to open the case before the 5953
Commissioner herein.

And the Clerk of this Court is hereby requested to include and certify the said order and this exception to it in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on appeal from the final decree in this cause, as provided by the fifty-

5954 second rule in admiralty prescribed by the Supreme Court.

Dated New York, June 23d, 1903.

EDWARD K. JONES,
Proctor for Petitioner.

To Messrs. BENEDICT & BENEDICT,
Proctors for Claimant Deslions, and
THOMAS ALEXANDER, Esq.,
Clerk.

(Endorsed)—Exception to Order of June 20, 1903.
Filed Oct. 19, 1903.

5955

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before THOMAS ALEXANDER, *Commissioner.*

IN THE MATTER

OF

The Petition of LA COMPAGNIE
5956 GENERALE TRANSATLANTIQUE,
owner of the Steamship "LA
BOURGOGNE," for limitation
of liability.

Re Claim of George Deslions.

SIRS:

Take notice that upon the affidavit of Charles Haldane, verified the 30th day of October, 1903, a

copy of which is hereto annexed, upon the steno- 5957
graphic notes of the testimony of the claimant George Deslions, and upon the written reports referred to in said affidavit, copies of which are already in your possession, I shall apply to the Court at a Stated Term thereof to be held at the United States Court House in the Post Office Building, Borough of Manhattan, City of New York, on the 4th day of November, 1903, at the opening of Court on that day, for an order directing the Commissioner who took the proofs upon the trial of said claim to reopen the trial thereof, and that thereupon the petitioner have leave to take the testimony of the witnesses named in the annexed affi- 5958
davit, and of such other witnesses as the petitioner may be advised are necessary, and that the petitioner have leave to further cross-examine the said claimant George Deslions, and for such other or further order in the premises as equity and good conscience require.

Dated New York, October 31st, 1903.

Yours, etc.,

EDWARD K. JONES,

Proctor for Petitioner.

To Messrs. BENEDICT & BENEDICT,

Proctors for Claimant George Deslions,

68 Wall Street, 5959

New York City.

5960 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
5961 of liability.

Re Claim of George Deslions.

UNITED STATES OF AMERICA.
Southern District of New York, } ss.:

CHARLES HALDANE, being duly sworn, says:

I am an attorney and counselor-at-law, and am associated with Mr. Edward K. Jones, proctor for the above-named petitioner, in the defense of the claim of the above-named George Deslions, and have
5962 conducted the trial of said claim before Hon. Thomas Alexander, United States Commissioner.

The claim of the said Deslions as sworn to by him on the 20th day of July, 1900, is as follows:

> "That on the 2d day of July, 1898, claimant shipped on board of petitioner's steamship *La Bourgogne* a quantity of personal property worth upwards of fifty thousand dollars, under an agreement with the petitioner for a valid consideration received, that the same should be safely transported on

said steamship to Havre, France, and there 5963
delivered to claimant or his agents. That the said property was totally lost in the collision hereinbefore mentioned and has never been delivered according to agreement at Havre."

Upon the examination of Deslions he testified that the personal property consisted of a collection of Indian articles and curios, such as moccasins, pipes, tomahawks, apparel, etc., and was really worth One hundred thousand dollars ($100,000.00) although Fifty thousand dollars ($50,000.00) was stated to be its approximate value in the sworn 5964
statement of his claim (*supra*).

The claimant asserts that he has been accumulating this collection since his arrival in the United States from France, and with respect to his history, antecedents and financial resources, he testified as follows:

Q. How old are you? A. I am thirty-six or thirty-seven.

Q. What is your nationality? A. French.

Q. Where were you born? A. In France.

Q. Whereabouts? A. In Lyons.

Q. What was your father's business? A. My father was an officer. 5965

Q. In the French Army? A. In the French Army.

Q. When did you leave France? A. About fourteen years ago.

Q. At that time you hadn't begun to make any collection, had you? A. I wasn't making any collection of Indians; I was studying ethnology and ethnography.

Q. But you hadn't begun to make your collection up to that time? A. Of Indians?

5966 Q. Of anything? A. Yes, I had many things.

Q. Had you a collection when you left France fourteen years ago? A. In this country? No.

Q. How old were you when you left France? A. I was thirty-seven, less fourteen.

Q. Well, how old were you? A. Twenty-three or twenty-four.

Q. Had you been engaged in any business up to that time? A. No.

Q. What were your means at that time? A. In Europe?

Q. When you left France for America? A. In Europe?

5967 Q. At that time? A. Do you mean if I had money when I came to this country?

Q. Do you understand the question? If not, say so? A. I was in the house of my folks; my people.

Q. You had no private means? A. I had no private means.

Q. How much money did you bring with you to this country? A. I had 10,000 francs, and about 300 francs in my pocket, besides.

Q. And the 10,000 was what; a letter of credit? A. They were in gold.

Q. And the 300 were in what? A. To spend; it was understood that I could spend that.

5968 Q. When you came to this country did you open a bank account? A. No, sir.

Q. What did you do with all the money that you had? A. Kept it.

Q. Where? A. In my room, and my pocket; I started to collect; I had ready cash in my pocket.

Q. Did you have 10,000 even? A. I had 10,000 francs exactly.

Q. All in gold? A. All in gold.

Q. What was the denomination of the pieces? A. What carat?

Q. Were they napoleons? A. They were napo-

leons; gold pieces of ten francs and twenty francs; 5969
napoleons.

Q. This 10,000 francs, did you draw it out of a bank in France before you left? A. My aunt gave them to me.

Q. A present? A. Yes.

Q. What is her name? A. Her family name or her husband's name, or what?

Q. Both? A. Adelphone Boileau.

Q. Where does she live? A. About two miles from Lyons.

Q. Is that the best address you can give? A. Well, the address from there is Lyons.

Q. No street or number? A. No; that is in the 5970
country; Perache.

Q. What is that; a commune? A. A commune, or a county; that is the name of a county.

Q. Is that your aunt's maiden name or her married name? A. Her married name.

Q. What is her husband's name? A. Jules.

Q. What is his business? A. He is a dealer in merchandise like wheat, oats, etc.

Q. A dealer in farm produce? A. Well, that is of France.

Q. Had you lived with them at any time? A. I did; she is my godmother.

Q. How many years did you live with them? A. 5971
I used to spend the summer with them.

Q. In the winter where did you live? A. With my folks.

Q. In the city? A. Yes.

Q. Was your father's name Deslions? A. Yes.

Q. What was his business? A. He was an officer.

Q. And he lived at Lyons? A. Yes.

Q. Was he in any other business? A. No, sir, he was a French army officer.

Q. Retired, or in active service? A. Both; after he got through being active he was retired."

5972 The taking of testimony on behalf of the claimant was not concluded until December 29th, 1902. Some time in January, 1903, the attention of the petitioner's agent in this city was called to various portions of the claimant's testimony, including the portion above quoted, and on the 9th day of February, 1903, Mr. Edward K. Jones, the petitioner's proctor, addressed a letter to the General Agent of the petitioner, containing the substance of the claimant's testimony as to his parentage and antecedents (as quoted in full above), and requesting that the petitioner, whose principal office is in Paris, France, set on foot, forthwith, an enquiry at
5973 Lyons, and Perache, as to the truth of the claimant's testimony.

Such an enquiry was accordingly instituted and a report thereon was received by petitioner's proctor on or about the 10th day of April, 1903.

Said report being, however, incomplete, the matter was again referred to the petitioner for further investigation.

Further enquiries were made and consequent thereon petitioner's proctor received a supplemental report on or about the 27th day of July, 1903.

There being still one point in connection with said enquiry not completely covered by said reports,
5974 the matter was a third time remitted to the petitioner at Paris, France, for final investigation, and the report thereon was received by petitioner's proctor on or about the 26th day of September, 1903.

At all times the petitioner's proctor requested that said investigation should be made as speedily as consistent with thoroughness and exactness, and affiant believes that it has been carried on and concluded as rapidly as has been possible under the circumstances.

As a result of said enquiry affiant states that the 5975
petitioner is now able to prove that the claimant upon the trial of his claim intentionally and corruptly swore falsely in the following respects:

I.—That prior to his departure for the United States he resided with his family at Lyons, France.

II.—That his father was named Deslions and was an officer in the French army, who has been in active service, but was retired.

III.—That he had an aunt named Adelphine Boileau, who lived at Perache. 5976

IV.—That the husband of his said aunt was one Jules Boileau, a dealer in grain and farm produce at Perache.

V.—That his said aunt gave him 10,000 francs in French gold, which he brought to the United States and with which he started his collection.

VI.—That Perache is two miles from Lyons, in the country; that there are no streets in Perache, nor are the houses numbered.

VII.—That Perache is the name of a commune 5977
or county.

VIII.—That he used to spend his summers with his aunt, and uncle Boileau at Perache, and his winters with his "folks" in the city (Lyons).

The petitioner now desires to take the testimony of Elisee Bolo, who resides at No. 11 rue de la Charite, in the City of Lyons; Louis Milliat of Nos. 30 and 31 Quai Rambaud, in said city; Joseph Mil-

5978 liat, Vice-President of the Chamber of Commerce, of Lyons, of 82 Route d' Heydrieu, in said city;

Chambeyrau, President of the Chamber of Commerce of Lyons, of No. 43 rue de la Bourse, in said city; Emile Bouvard, of No. 17 rue Belier, in said city; the members of the firm of Blanc, Fenet & Co., dealers in grain and flour, No. 27 Pier de Retz, in said City; J. T. Coullet, of No 38 Pier St. Vincent, in said city; J. Echinard, of No. 43 rue Victor Hugo, in said city; the members of the firm of Jabrin & Rouchat, of No. 26 rue Grenett, in said city; A. Milliat, of No. 85 Grand rue de la Gulletiere, in said city; the members of the firm of Perrichon &
5979 Preant, of No. 6 Pier de la Gare d'Eau, in said city; Sylvestre, dealer in grain and flour, 269 and 271 Avenue de Saxe, in said city; Boileau, 48 rue de la Charite, in said city; Boileau, 23 rue Godfrey, in said city; Boileau, 9 rue Gigedot, in said city; Boileau, 24 rue Richau, in said city; Bonhomme, Vice-President of the Chamber of Commerce of Lyons, 36 rue St. Helene, Lyons;

Gelas, Treasurer of the Chamber, No. 28 Rue Franklin, Lyons; L. Milliat, Secretary of the Chamber, Lyons; Perret, 16 Pier
5980 de Petz, Lyons; the custodian of the records of the General Staff of the army, and such other officers and officials of the French army and government at Lyons and elsewhere as are competent to testify to the non-existence of the alleged Deslions, as officer, active and retired, of the French army; and such other persons as may have knowledge of the falsity of the testimony of the claimant above set forth.

I am informed and believe that each and all of the witnesses named, and many others, will testify that during a period covering the entire life of the claimant no person answering the description of

his father given by the claimant has existed in the 5981
City of Lyons; that no person answering the description given by the claimant of his aunt or her husband has during that period lived in Perache; that Perache is not a commune or country district two miles from Lyons, where there are no street and the houses are not numbered; but that it is a ward of the city where all the houses are identified by street numbers; and that all of the testimony given by the claimant, as above set forth, is false in every particular.

Copies of the reports in writing above referred to have been furnished to the proctor for said Desllons and are now, as I am informed and believe, 5982
in his possession.

Upon an affidavit identical with the foregoing, and upon such reports I applied to the Hon. Thomas Alexander, Commissioner, on the 29th day of October, 1903, for leave to reopen the trial of said claim and to take the testimony of the witnesses above named, and of such other witnesses as the petitioner's proctor might be advised could furnish competent and material evidence of the falsity of the claimant's testimony. Said Commissioner has not yet passed upon the said claim, but still has the same under advisement. On the hearing of said motion Mr. Robert D. Benedict, the claimant's 5983
proctor, objected that the Commissioner had no power to reopen the case because on the 20th day of June last the Hon. Edward B. Thomas, Judge of the District Court, had denied an application made by the petitioner to reopen the case for the purpose of taking the testimony of witnesses residing in Santa Fe, New Mexico.

After hearing such objections and a statement by counsel for the petitioner of the contents of the affidavit and the nature of the proof he desired to

introduce, the Commissioner denied the motion to reopen the case upon the following grounds:

1. That he doubted his power to do so.

2. That too much time had already been taken up with the determination of this claim, including the delay of the Commissioner in arriving at a decision, for which the Commissioner said he felt he owed apologies to counsel.

The examination and cross-examination of the claimant Desliens covers about three hundred and fifty (350) pages of stenographic notes. In making the motion last above referred to before Commissioner Alexander said stenographic notes were not specially made part of the moving papers. They are made part of the papers upon this motion in order that the Court may determine from the general character of the claimant's testimony whether equity and good conscience do not require that the petitioner be allowed to show by conclusive proof the commission of perjury by the claimant as to the matters and things particularly above referred to.

CHARLES HALDANE.

Sworn to before me, this 30th day of October, 1903.

JOSEPH P. NOLAN,
Notary Public,
New York County.

[SEAL.]

(Endorsed)—Notice of Motion and Affidavit.—Filed Nov. 24, 1903.

Motion denied.

E. B. T.,
U. S. J.

UNITED STATES DISTRICT COURT, 5987

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability. 5988

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, deposes and says: That he has received a notice of motion of an application to be heard "at a Stated Term to be held at the United States Court House in the the Post Office Building, Borough of Manhattan, City of New York, on the 4th day of November, 1903, at the opening of Court on that day."

Deponent further says that this case has been by order of the Court directed to be heard before Judge Thomas. That a previous motion, similar to this, was made in June last, and was heard before Judge Thomas. 5989

Deponent further says that he has read the affidavit of Charles Haldane, sworn to on the 30th day of October, 1903, on which this motion is based; that he notices that in such affidavit it is stated that on the hearing of a motion recently made before Commissioner Alexander, to reopen the case, deponent objected that the Commissioner had no power to reopen the case, "because on the 20th day

2002

5990 of June last, Hon. Edward B. Thomas, Judge of the District Court, had denied an application made by the petitioner to reopen the case for the purpose of taking the testimony of witnesses residing in Santa Fe, New Mexico."

This statement is inaccurate. Deponent did not state that Judge Thomas had denied an application "made by the petitioner to reopen the case for the purpose of taking the testimony of witnesses residing in Santa Fe, New Mexico," and, furthermore, such was not the fact. Deponent stated that a similar application had been made to Judge Thomas to reopen the case, and had been denied by said
5991 Judge, except as to the taking of the testimony of one Jake Gold.

And deponent further says that the application then made to Judge Thomas was not only for the purpose of taking the testimony of witnesses residing in Santa Fe, but also apparently for the purpose of taking testimony as to similar facts as to which testimony is now proposed to be taken.

R. D. BENEDICT.

Sworn to before me, this 2d day of November, 1903.

WM. D. JONES,
U. S. Comr.,
S. D. of N. Y.

[SEAL.]

5992

(Endorsed)—Affidavit of R. D. Benedict on Motion Notice for Nov. 23/03.—Filed Nov. 24, 1903.

UNITED STATES DISTRICT COURT, 5993

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "BOURGOGNE," for limitation of liability.

5994

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, deposes and says:

After the first decision by the Commissioner in this matter, not to reopen the hearing, an application was made on behalf of the petitioner herein, to His Honor Judge Thomas, before whom this case had been transferred, for an order opening the said reference before the Commissioner, and allowing the petitioner to adduce further testimony in its behalf. That application was made on the affidavit 5995
of Charles Haldane, and part of said affidavit was as follows:

> "Claimant testified that he formerly resided at Lyons, France; that his father was an officer in the French Army; that his aunt Adelphine Boileau, lived at Perache, about 2 miles from Lyons; that she was the wife of Jules Boileau, a dealer at Perache, in grain and provisions; and that when he left for the United States, fourteen years ago, his aunt gave him ten thousand francs in gold.

which he brought to this country, and which
5996 enabled him to begin collecting curios.

"I have caused diligent inquiry to be made at Lyons and Perache, and am in receipt of communications stating that no trace can be found at Lyons of any person named Deslions, nor at Perache, of any person named Boileau."

And said affidavit asked for an order directing the Commissioner to reopen the case, and to allow the petitioner to put in such proof as it could produce "of the facts upon which it relies, to prove the falsity of the claimant's testimony, or any part
5997 thereof."

Deponent further says that said motion came on to be heard before Judge Thomas, and that Judge Thomas made an order thereupon, on the 20th of June last, allowing the petitioner to produce and examine before the Commissioner, on the hearing before him, on June 29th, a witness named Jake Gold, and that in all other respects the application of the petitioner was denied.

That no leave was given by Judge Thomas for the renewal of the said motion. The evidence of Deslions set forth in the affidavit of Mr. Haldane, on which this motion is made, was given on his cross-
5998 examination by petitioner's counsel, and was given on his cross-examination by petitioner's counsel, and was given on October 6th, 1902.

R. D. BENEDICT.

Sworn to before me, this 2d day of November, 1903.

WM. D. JONES,
U. S. Commissioner,
[SEAL.] S. D. of N. Y.

(Endorsed)—Affidavit of R. D. Benedict.—Filed Nov. 24, 1903.

At a Stated Term of the District Court 5999
of the United States of America for the Southern District of New York, held at the United States Court Rooms in the Borough of Brooklyn, City of New York, on the 23d day of November, A. D. 1903.

Present—The Honorable EDWARD B. THOMAS,
District Judge.

IN THE MATTER 6000

OF

The Petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, for a limitation of liability.

A motion having been made on behalf of the petitioner herein for an order opening the hearing of the reference before Commissioner Alexander, and allowing the petitioner to introduce further evidence on said reference, and said motion having 6001
been argued by counsel for the respective parties;

Now, on motion of Benedict & Benedict, proctors for George Deslions, claimant, it is

Ordered, that said motion be in all things denied.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Order Denying Motion to Reopen Reference.—Filed Nov. 24, 1903.

6002 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
6003 BOURGOGNE," for limitation of liability.

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 24th day of November, 1903, denying petitioner's motion for leave to reopen the case herein for the purpose of introducing certain testimony specified in the said notice of motion and the exhibits annexed thereto.

And the Clerk of this Court is hereby requested
6004 to include and certify the notice of motion upon which said order is based and the exhibits and papers thereto annexed, together with the said order and this exception to it in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from the final decree in this cause as provided by the

52d rule in admiralty prescribed by the Supreme Court. 6005

Dated New York, December 1st, 1903.

Yours, etc.

Proctor for Petitioner.

To Messrs. Benedict & Benedict,
68 Wall Street,
New York City, and
Hon. Thomas Alexander
Clerk.

(Endorsed)—Exception to Order November 24th, 1903.—Filed Dec. 23, 1903. 6006

UNITED STATES DISTRICT COURT,

Southern District of New York.

In the Matter
of
The Petition of La Compagnie Generale Transatlantique, owner of the Steamship "La Bourgogne," for limitation of liability. 6007

Sirs,—Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by Louis Delfonte, and prays that the same may be disallowed and excluded unless established by

6008 further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated New York, April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
Messrs. BULLOWA & BULLOWA,
Proctors for Claimant.

(Endorsed)—Notice of Objection to Claim of Louis Delfonte.—Filed Apr. 21, 1902.

6009

IN THE MATTER
OF
The Claim of LOUIS DELFONTI.

LOUIS DELFONTI, the claimant, being duly sworn, testified as follows, through SILVIO BONNANI, an
6010 interpreter, who was also duly sworn:

EXAMINED BY MR. MURRAY:

Q. What is your name? A. Louis Delfonti.

Q. Where do you live? A. Milford, Mass.

Q. Were you a passenger on the steamship *La Bourgogne* July 2d, 1898? A. I was a passenger.

Q. State how you were saved from the *Bourgogne*—did you purchase a ticket for the *Bourgogne;* did you pay for your passage? A. Yes, sir.

Q. Where did you purchase your ticket? A. I

bought it at No. 97 Thompson street, from the agent 6011
of the Company, Caesar Compani, in New York.

Q. Were there any stipulations in the ticket with regard to exempting the company from liability? A. I did not read the ticket at all.

Q. Did you surrender that ticket to the purser on the steamship? A. Yes, I did.

Q. Did he give you anything in return? A. Yes.

Q. What was it? A. It was a paper; one check for trunk and another for a ticket when I got over the water; I received a small red book and my trunk check.

Q. Where was your ticket from and to? A. From New York to Milan. 6012

Q. Are these the papers which you received? (Handing papers to witness.) A. Yes, I recognize them.

Papers received in evidence and marked Exhibits "C" and "D" of this date.

Q. Did you receive this from the purser also (handing paper to witness)? A. Yes, sir.

Mr. Murray: I offer in evidence as tending to corroborate the witness.

Received and marked Exhibit "E" of this date.

Q. You were on the vessel when she sailed from 6013
New York; on the *Bourgogne?* A. Yes.

Q. What happened to the *Bourgogne?* A. There was a collision.

Q. Did you suffer any injury by reason of that collision? A. Yes, I did.

Q. State what it was? A. I was injured in my leg.

Q. State about what the inquiry was and what it is? A. In order to save myself at the time of the collision, I had to jump several times from one boat to

6014 another; from the steamer into—from one boat onto another, and I knocked my legs against something very hard, and this is how I sustained my injury.

Q. Was it a cut or bruise or break? A. My leg was cut and bleeding.

Q. How long did it take it to get well? A. It will never get well.

Q. It is still an injury? A. It is getting worse.

Q. Have you had it treated by physicians? A. Yes.

Q. What physicians; do you know? A. Dr. Curley, of Milford, is still treating me.

Q. What is your business? A. I am a stone

6015 cutter.

Q. You depend upon your legs a good deal for your work? A. I must depend entirely on my legs, otherwise I could not work.

Q. Do you find any hindrance to your business now on account of the injury to your leg? A. Yes, it does bring me a lot of annoyance, because I cannot do the proper work; I cannot make the same amount of money that I used to.

Q. Do you find it incapacitates you any from doing the same amount of work? A. No, I cannot do the same work I used to once.

Q. Does it show any effect when you attempt to walk? A. Yes, I do, and I always feel pains when

6016 I walk.

Q. Does it prohibit you from walking as much as you did? A. I cannot do as much walking as I used to once.

Q. How does the pain from it affect you? A. It has the effect of a sharp needle puncturing me all the time.

Q. You have not had it injured any since its original injury? A. No, I never had anything done to it.

Q. Does it stiffen your joints at all; the knee or

any part? A. Or any other spot, and it generally 6017
swells up at night and throws out matter and then cools out in the morning.

Q. Have you made a claim against the Company for causing you this injury? A. Yes, sir.

Q. And you authorized Bullowa & Bullowa to file a claim against the Company? A. Yes, sir.

Q. You claim $10,000 for the personal injury to yourself? A. Yes, sir.

Q. Did you suffer any other loss by reason of the collision? A. Yes, sir. I lost my trunk.

Q. Just state what was in your trunk and its value? A. It was all full of my personal clothes and underwear; I had a gold ring in the trunk, a 6018
gold pin, and a stud and a gold chain.

Q. What was their value? A. The ring was a present I received, I think it was worth around seven or eight dollars; for the chain I paid around $20 and the pin $4 and the stud $2.

Q. What was the value of your clothes in your trunk? A. The value of my clothes and underwear was somewhere about $150 altogether.

Q. That included the trunk? A. Yes.

CROSS-EXAMINED BY MR. KOPF:

Q. Did you have a watch with this chain? A. 6019
Yes.

Q. Why didn't you state that when your counsel asked you? A. I had a watch also in the trunk, and I never thought to mention it.

Q. Where did you buy this chain? A. Down in California.

Q. That is a large place? A. In San Francisco.

Q. From whom? A. I bought it in a store.

Q. From whom? A. I cannot recollect the name of the store.

Q. How many suits of clothes did you have? A. I had two brand new suits besides other old clothes.

6020 Q. How many suits of underwear did you have? A. I must have had over a dozen of each.

Q. What do you think the suits of clothes were worth, apiece? A. One of the suits I paid $20 and the other $18, new.

Q. When did you buy them? A. I bought the two of them, one in Boston and one in Milford, Mass.

Q. What was the name of the tailors? A. I cannot recollect the name of the tailors.

Q. Can you give the address? A. Yes, I can get them; I cannot recollect them.

Q. I want you to give me the names and ad-
6021 dresses of the persons from whom you bought all these effects? A. I cannot recollect them, but I will produce them.

Q. Send them to your counsel and he will give them to me? A. All right; I cannot go to Boston and get the Boston tailor's address, but I can get the one in Milford, because I live there.

Q. You can give the name of the Boston tailor? A. I know the store is in Washington street, but I cannot recollect the name.

Q. Now, how much was this underwear worth, a suit? A. I had some worth $2 a suit, and some $1.50 a suit.

6022 Q. How long did you have this watch and chain? A. I had the watch and chain about seven or eight years.

Q. What metal was the chain? A. Gold.

Q. What kind of a chain was it? A. Very small rings; thin chain.

Q. What was your business before you took the trip on the *Bourgogne?* A. Stone cutter.

Q. How long have you been a stone cutter? A. I am 32 years old, and I worked since I was 14, at the same business.

Q. What is the character of your work; do you

go out to work or work in the stone yard? A. I go 6023
out and work in several places, and sometimes in these stone yards.

Q. Always in the stone yard? A. Yes; I am sent out sometimes on buildings to perform some work there, and sometimes I work in the yard.

Q. What did you earn as a stone cutter previous to injuries you have testified you received?

Objected to as immaterial and incompetent.

A. In those days I used to make from $3 to $4.50.

Q. What have you made since the injury?

Same objection.

6024

A. $3. I am only making $3 because I am working still in the same place, but I cannot go out; I cannot go to New York and perform work where I could get $4.50, etc.

Q. Where did you work previous to the trip on the *Bourgogne?* A. I was woking for a firm in Milford, Mass.

Q. How long did you work at Milford? A. Three years.

Q. And are you working for the same concern now? A. No, I always worked in Milford pretty nearly, but for different people all the time.

Q. Mention the names of those people you worked 6025
for before you were injured? A. Norcross Brothers; Milford Pink Granite Company of Milford, Mass. I worked for these two concerns previous to my going to Italy on the steamship *La Bourgogne.*

Q. Who have you worked for since? A. I came back and I first went to Norcross and then to the Bay State Company, and then again for Norcross; for which people I still work.

Q. Then you still do inside and outside work? A. I am always inside now.

Q. In the stone yard? A. In the stone yard.

6026 Q. How long have you been working in the stone yard since the disaster? A. I only started to work three months after this disaster, because I could not do anything on account of my leg at the start; I could not possibly do any work at the start for three months.

Q. Why? A. Because I was so sick that I could not do anything.

Q. When did you first see a physician about your wounds? A. As soon as I got back from Halifax I went to Milford and I had a physician to visit me at once.

Q. What was his name? A. Dr. Curley.

6027 Q. How long did he attend you? A. Ever since, but I am under the treatment of another doctor now; I went to the Boston City Hospital.

Q. What is the doctor's name at the Boston City Hospital? A. I cannot recollect the name of the doctor there.

Q. I ask you to obtain that name and send it to me? A. I think I have the admission card of the hospital, and I will send it to you as soon as I get back.

If the paper is produced counsel for the claimant states that he will offer it in evidence as produced.

6028 Petitioner's counsel reserves the right to put in proof in behalf of the petitioner until all of the claimants have put in their direct proof, and also reserves the right to object to the proofs now offered, such proofs or objections, should he desire to offer any, to be made upon four days' notice to the other side.

Hearing adjourned without date.

UNITED STATES DISTRICT COURT, 6029

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "BOURGOGNE," for limitation of liability. 6030

SIRS,—Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by Enrico Cirri, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated New York, April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner. 6031

TO THOMAS ALEXANDER, Esq.,
Commissioner, and
Messrs. BULLOWA & BULLOWA,
Proctors for Claimant.

(Endorsed)—Notice of Objection to Claim of Enrico Corri.—Filed Apr. 21, 1902.

6032

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability as owner of the Steamship "LA BOURGOGNE."

NEW YORK, June 10th, 1902.

6033 In the Matter of the Claim of Enrico Cirri.
Met pursuant to notice.

Present—The COMMISSIONER,
Mess. BULLOWA & BULLOWA, Mr. Murray of Counsel, for the Claimants.
Mr. EDWARD K. JONES, Mr. Kopf, of Counsel, for the Petitioner.

It is stipulated that the testimony may be taken by a stenographer and the costs thereof taxed out of the funds.

6034 ENRICO CIRRI, the claimant, being duly sworn, testifies, through SILVIO BONNANI, an interpreter, who was also duly sworn, as follows:

EXAMINED BY MR. MURRAY:

Q. What is your name? A. Henry Cirri.

Q. What is your business? A. Importer of Italian produces.

Q. Are you a claimant in this proceedings? A. 6035
Yes, sir.

Q. Have you instructed your attorneys, Bullowa & Bullowa, to file your claim? A. Yes, sir.

Q. What is the cause of complaint that you have against the petitioner? A. In regard to certain disaster as to which I met on the 4th of July, 1898, the date of the sinking of the steamship *"La Bourgogne."*

Q. Were you a passenger of the *Bourgogne?* A. Yes, I was a passenger of the boat; second class.

Q. Had you purchased a ticket? A. I bought my ticket in the City of Boston, from a ship agent by the name of Di Pesa, agent. 6036

Q. Did he display a sign? A. Yes, sir.

Q. That he was the agent of the company *Generale Transatlantique?* A. Yes, sir.

Q. Do you recollect how much you paid for your ticket? A. Between $52 and $54.

Q. Did he give you a ticket or did he give you an order? A. An order.

Q. What did you do with the order? A. With that order I came to New York and presented myself to the general office of the French Line, on the return of the order I got my regular ticket for the voyage.

Q. Did either the agent at Boston or the person 6037
in charge at the office of the company in New York call your attention to any limitation of the company's responsibility for such passenger?

Objected to as immaterial.

A. Nobody ever mentioned a word in regard to these.

Q. Did you read the ticket? A. The only thing that I cared to read on the ticket was my name, and I was satisfied with that.

Q. Was there a series of stipulations on the

6038 ticket that you saw. A. I never cared to read the ticket whatsoever, except my name.

Q. I ask you if there was one? A. I cannot tell; the only thing I saw on the ticket was my name.

Q. Did you go aboard *La Bourgogne?* A. Yes, sir.

Q. What did you do with your ticket?

Objected to as immaterial.

A. I went on board the steamer; one of the company's employes came along and took my ticket away and gave me a small cardboard in return for the ticket.

6039 Q. Is that the ticket (showing witness card) that you received aboard the vessel? A. Yes, sir; I took it and put it in my pocket.

Mr. Murray: I offer the card in evidence.

Objected to.

Q. Where did your ticket read from; what was your passage from and to? A. From New York to Paris.

Objection overruled. Exception.

Card received and marked "Exhibit A" of this date.

6040 Q. Just state if the *Bourgogne* sailed from New York, and how far she had gone, and what happened to her? A. We left New York at about 10 o'clock in the morning; we sailed for two nights and one day before anything happened, and on about four o'clock in the morning of the Fourth of July, I was sound asleep at that hour; on the morning of the Fourth of July I suddenly awoke and saw my room-mate getting dressed, and I asked him what was the trouble and at the same time I heard a lot of people walking around in the corridors, and a lot of boats, and I heard the siren whistling;

I told my friend not to get scared, and I was wondering why he was getting dressed; when I saw my friend give me no answer I looked out of the window, but it was all foggy and I could see nothing; I opened a door of the cabin and saw all the people walking, so thought best for me to dress; I only put on my pants, and I followed the crowd; it took me quite a while to reach the stair to the bridge, and when I got there I saw a bunch of children, women, passengers all crying and weeping, and then I ascertained the fact that the boat was sinking, because I seen and I could notice myself it was leaning all on the right side. 6041

Q. Then what did you do? A. When I saw these I made for one of the life-boats at once and jumped in it; there were about 100 other passengers with me, and I could see the children in the same boat were all trampled over, and as soon as I saw these I asked some of the people there for a knife, and cut the ropes and let the boat down, but nobody had a knife or anything of the kind, to cut the rope; I did not have one myself; and just at this time I heard the ship's gun firing two shots, which I took for a meaning of great danger, and in order to save my life I jumped out of the boat and landed in the water; I swam for about 200 yards away and I came near to another boat, of which I got hold of in my hands; at the time I could get hold of this boat the people inside the boat was scared of me, and were trying to push me away; when they saw I was half naked, thinking I was one of the crew; one of the deck-hands; they pulled me into the boat. 6042 6043

Mr. Kopf: I move to strike out all the testimony as to what the witness thought or wondered at.

Q. The vessel upon which you sailed from New York, and delivered your ticket, as you have just stated, and which met with a collision and acci-

6044 dent, of which you have been speaking, was what vessel? A. *La Bourgogne.*

Q. What was the small boat into which you got; do you remember, aboard the *Bourgogne;* what number? A. I could not see the number of that boat.

Q. On which side was it? A. On the left side.

Q. Were members of—were there officers or crew there in charge of that boat? A. How could they tell; I could not; there because people were all half dressed and you could not ascertain that fact.

Q. Was there any disciplin? A. There was no
6045 discipline whatever, it was a regular confusion.

Q. After you were taken into the boat; after you had been swimming, what did you do; as shortly as possible? A. In the boat where I was saved there were at least from 43 to 44 persons; and of these there were only two passengers; the rest were all deck hands.

Q. Were you subsequently taken aboard what vessel? A. We could see in the distance a certain form of a sail, and we made for that direction until we made out the *Cromartyshire,* until we got aboard; the boat on which I was saved, the *Cromartyshire,* was at a standstill, and of course we
6046 made for that direction.

Q. Were you subsequently taken aboard the *Grecian?* A. It must have been—we had no watch or nothing; it was after sun-down we were transferred to the *Grecian.*

Q. And taken to Halifax? A. Yes, sir.

Q. When you sailed from New York, were you—state what your physical condition was? A. Excellent.

Q. Were you injured any by the accident or by the exposure which you received? A. I was injured in my foot, and was laid up for about four months.

Q. Were you treated for it by a physician, for 6047
the injury you received? A. Yes; I had a doctor that treated me right along.

Q. Did he give you a certificate of what was the matter with you?

Objected to.

A. Yes; this is the certificate I got off of him.

Q. He was a physician where? A. In Boston, a Boston doctor; he used a blank of the Italian Mutual Benefit Association in making out my certificate.

Mr. Murray: I offer that in evidence as being doctor's certificate showing what he had done to 6048
him.

Objected to as incompetent. Objection sustained.

Q. Did this injury which you received, caused by the collision of the *Bourgogne*, cause you to be lame or deprive you of your powers at all? A. Yes, it caused me lame.

Q. How long did it keep you lame? A. For at least three and a half months.

Q. State whether or not you feel any effects of that injury now? A. I do, when the weather changes I always have some pains. 6049

Q. What kind of pains? A. Something like rheumatic pains; I feel the pains all in my muscles.

Q. Did you lose anything on the *Bourgogne?*

Objected to.

A. I lost $500 cash; my gold watch and gold chain; I lost a diamond ring, a brand new dark suit, and another light suit, and the old one I used on the steamer on my own person, and all my underwear, of course, and two pair shoes; all underwear I had in my trunk; only my hat.

6050 Q. In regard to the $500 which you lost; state what that was and how you had it? A. I had it in my inside vest pocket.

Q. What was the form of it? A. They were all United States bank notes; six fifty dollar bills and two one hundred dollar bills; United States bank notes.

Q. What was your watch worth? A. I paid $75 for it.

Q. Was it a good watch? A. Fine, Waltham movement.

Q. Was the chain separate? A. Between $42 and $45 I paid for the chain.

6051 Q. What was the diamond ring worth? A. From $50 to $55, a small diamond.

Q. What were your suits of clothes worth? A. The black suit I paid $48 for.

Q. Was that new? A. Brand new; but the light suit was a cheap one; I only paid from $22 to $27 dollars for it.

Q. And the underclothes and the shoes, and the other matters, how much would you say altogether? A. 2 pair shoes, $2 a pair; about $11 or $12, but my valise I paid $7 for; it was new.

Q. Did you lose anything else on the *Bourgogne,* or did you suffer any other loss? A. I cannot think

6052 of any other loss.

Q. Was there a man named Louis Polcri? A. There was a man named Louis Polcri, who was my cabin mate, and during the time I got acquainted with him in Boston I sold to him about $1,240 worth of goods, and of course he was indebted to me for this amount, and he promised me he would pay me as soon as we got in Italy; this man lost his life aboard the *Bourgogne,* and of course, when I came to New York, and went to see his lawyers, and I was told by them that they would have paid me very soon, but after a certain time this man's law-

yers settled all the creditors by paying only 20 per 6053
cent., and of course I only got 20 per cent. of my bill.

Mr. Kopf: I want this testimony striken out.

The Commissioner: I grant your motion to strike out.

Exception taken.

Q. Did you have your picture taken when you got back to Halifax? A. Yes, sir.

Q. Who with? A. With Mr. Delfonti.

Q. I show you a picture and ask you if that is a copy of it? (Showing witness picture.) A. Yes.

6054

Mr. Murray: I offer it in evidence as corroborating the fact—to show that the picture shows for itself who the two men are; that they were survivors of the *Bourgogne*.

Picture marked Exhibit "B" of this date.

CROSS-EXAMINATION BY MR. KOPF:

Q. How long have you been engaged in dealing in wine and Italian produces? A. About seven years.

Q. You were engaged in that business at the time that you left Boston for your trip on the *Bourgogne?* A. Yes, I was still in the same business. 6055

Q. As proprietor? A. Yes, sir, as proprietor.

Q. How did you sustain the injuries to your knee and ankle which you have testified about? A. I sustained these injuries at the time I jumped from the life-boat into the water; I must have knocked my leg against something hard.

Q. As I understand you that life-boat was on the left hand side of the *Bourgogne*, facing the bow of the vessel? A. It was on the left, facing the bow.

6056 Q. And that side of the vessel was very high out of the water, wasn't it? A. Very much out of the water.

Q. And the boat that you were in hung from its davits towards the center of the vessel; the life-boat that you jumped from hung from its davits towards the center of the vessel? A. Yes, towards the center of the steamer.

Q. If you wanted to jump into the water, don't you think it would have been more convenient to do so from the right hand side?

Mr. Murray: I object to that.

6057 A. I could see that on the other side of the boat there were no life-boats, and there was no use of going to that side, because there was no possibility of my being picked up.

Q. (Question repeated.) I did not go on the right side, because I saw there was no life-boats on the right side.

Q. (Question repeated as follows:) If you wanted to jump into the water, don't you think it would have been more convenient to do so from the right-hand side?

Mr. Murray: I object to any further; that answered the question.

Mr. Kopf: It doesn't any such thing. I asked
6058 him about being more convenient to jump into the water from the other side.

The Witness: No, it was not more convenient for the reason there were no life-boats on the other side, and all the life-boats were on the other side, and I don't see why it should be more convenient on the other side, where there was no chance of saving me.

Q. When did you first see a physician about the injuries you have testified to? A. As soon as I got in Boston.

Q. How did you know that the men in the boat in which you were saved were sailors from the *Bourgogne?* A. I could tell by their looks; they were all black and dark; and they looked as if they came from the hull, the firemen. 6059

Q. Do you know the names of any of them? A. No.

Q. I mean after you arrived in Halifax, rather after you were saved on the *Cromartyshire?* A. No, I seen some of them, but of course I could not get their names; we were all together aboard the *Cromartyshire*, of course I didn't know the name of any of them.

Q. Where were you going on this voyage? A. I was going to Italy; my own country. 6060

Q. For what purpose?

Mr. Murray: I object.

A. I wanted to go and buy more wines in Italy; it has been my practice to go there every year for such purpose.

Q. Where did you get this $500 from, which you say you lost? A. That was money I made in my own business.

Q. Where did you draw it; out of the bank? A. No, on Friday, the day previous from my leaving Boston, I made some collections, and got some checks from this and I went to work and through some friends I got these checks cashed and took the cash with me. 6061

Q. Can you name any persons from whom you collected this money?

Mr. Murray: I object.

A. Yes, I can.

Q. Name them? A. Mrs. Vercelli; Hotel Ambrosoli, Bar-room Marotta, and check of Mr. Brogi; I cannot recall any others.

6062 Q. How much did you collect from Mrs. Vercelli? A. I think Mrs. Vercelli gave me a check for about $100 to $120.

Q. And from Ambrosoli? A. Hotel Ambrosolli, $150.

Q. And from the bar-room Marotta? A. It must have been something around $75 to $80, with those four or five checks I got about $500.

Q. And then from Brogi? A. I cannot recall what I collected from him; I brought him my statement and I know he gave me something on account, but I cannot recall the figures he gave me. A few days before I left Boston I had already sent a check
6063 to Europe for 390 pounds, to Peabody & Company.

Q. Tell me how it was that you got this money in six fifty dollar bills, and two one hundred dollar bills? A. I went to a friend of mine, an undertaker, by the name of Badaracco.

Q. For what purpose? A. So as to make very little volume in my pocket.

Q. Where is this undertaker? A. North Bennett street, Boston; I can't recollect the number.

Q. You turned over these checks and this money to him and he gave you six $50 and two $100 bills? A. The checks which I got in payment of those collections, I cashed those through some friends, but
6064 I had so many small bills when I got my checks cashed I went to this undertaker and asked him to give me fifties and one hundred dollar bills.

Q. Which checks, and the names of the friends who cashed these checks? A. Mr. Levezzo, Mr. Crovo, I can't think of any others now.

Q. How long did you have this watch? A. About two years.

Q. Where did you buy it? A. I bought it from a cetrain party to go into California; Mr. Belloni.

Q. Is he there now? A. I think he is.

Q. How did you come to buy it from him? A.

This man was out of money; he wanted to go to 6065
California and he came to me and told me he had been tryiag to sell the watch, and somebody had made a very small offer, which I did not think was right, so I made up my mind I would give the right price, of course, and I bought the watch.

Q. What price did you give him? A. $75.

Q. How long did you have the diamond ring? A. It was a long time I had the ring; at least seven or eight years, perhaps more.

Q. Where did you buy that? A. It was a present made to me.

Q. How do you know then it was worth $50 or $55? A. Because I had an occasion to have it 6066
cleaned, and of course I asked the man that cleaned it for me, the value of it.

Q. What was the name of that man? A. Mr. Lippi, a jeweler in Boston.

Q. Is he still in Boston? A. Yes, not in business for himself.

Q. Who is he in business with? A. On Washington street; he works in some jewelry store in Washington street, I cannot recall.

Q. How long did you have this suit that you paid $48 for? A. I never put it on once in my life.

Q. Where did you buy it? A. I had it made to order in Boston.

Q. Give me the tailor's name and his address? 6067
A. Corindo Mulinelli.

Q. Where is he? A. Roxbury; used to be in Hanover street.

Q. He is in Roxbury now? A. I think so.

Q. Where did you get the other suit? A. It was also made—the other suit was made by a tailor named Pompilio Valerio.

Q. Where is his place? A. He has a store in the Square of the State House, in Boston.

Q. How many days after the disaster was that

6068 picture taken? A. The day we got off the boat in Halifax we got the picture taken.

Q. What was the name of the physician who attended you during these three and a half months that you have testified to; of your suffering? A. G. De Amezaga.

Q. Is his address 301 Hanover street? A. Yes, sir; Boston; but he is not there any more.

Q. Where is he now? A. He is in Hanover street, but not the same number.

Q. He is the physician of the Benefit Society of which you are a member? A. Yes, sir.

Q. Did he attend you during those three and a
6069 half months? A. No, he did not take care of me during all those three and a half months, because I left Boston; he only attended to me during the time I stayed in Boston, because I sailed again for Italy. He did not want me to leave, because I was not in condidtion, but I had to leave just the same.

Q. When did you sail again for Italy? A. 24 or 25 days.

Q. How often did you see your doctor from the time you arrived in Boston after the disaster until you sailed for Italy? A. Pretty near every day.

Q. Did you call on him? A. No, the doctor used to call on me; but a few times I went there my-
6070 self.

Q. How many times do you think you went yourself? A. Might be four or five times, at the most.

Q. Can you tell me when you called? A. I did not make any special mark.

Q. Can you tell me how many times you called personally the first week? A. I recollect that I never went to see him the first week, because ——

Q. The second week? A. I think the first time I went to his office was on the second week; I might have called there twice the second week, I cannot recollect exactly.

Q. When did you arrive in Boston; what day in 6071
July? A. I can't recollect whether it was Thursday or Friday, the 7th or the 8th or the 9th.

Q. Which leg was injured. A. The left leg.

Q. Any other physician attend you beside Dr. Amazaga? A. I had to use the medical aid of one of the doctors in Florence, Italy.

Q. What were their names? A. He has been my folks' my my family doctor for quite a number of years; I think his name is Vanni.

Q. How long were you in Italy on this trip? A. I remained in Italy about three and a half months.

Q. How long were you treated in Italy? A. The doctor did not come to see me very often; I 6072
only saw him a few times, but he prescribed for me a certain medicine I had to apply every day.

Q. Apply or take? A. Apply, yes, a certain tincture.

Q. Did you stay in Florence during all this time? A. No.

Q. Traveled around? A. I wish I could have done so, but my business compelled me to travel in the neighborhood in the Province of Florence, where my business was, but of course I always used very freely carriages and other means of conveyances.

Q. What was the color of the passenger ticket 6073
you got here in New York? A. It is really hard for me to recollect it; if I don't make a mistake I think it was white, printed in blue.

Q. (By Mr. Murray.) What do you mean by stating you used carriages very freely whenever it was convenient? A. I had to use the carriage on account of the state of my leg, which I could not use by walking; whenever I went I had to use a carriage; now there are no cars whatever and you have to use carriages.

6074 Q. Are you sure the color of the ticket was white? A. No, I am not positive.

Q. It might have been pink? A. I cannot tell.

Q. Might have been blue? A. I cannot tell.

Q. When you stated the names of the people from whom you got checks, did you mean to give the exact amount of the checks, or about what they were?

Objected to.

A. I did not intend to give the right figures, but I only intended to show I collected that amount.

6075

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE
6076 GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

SIRS:

Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by

Henry Hyer Knowles, as Administrator of Ger- 6077
trude Lalla Rookh Knowles, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated, New York, April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
Messrs. ALEXANDER & COLBY,
Proctor for Claimant.

6078

(Endorsed)—Notice of objection to claim of Henry Hyer Knowles as Administrator, etc.—Filed April 23, 1902.

6079

6080 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before THOMAS ALEXANDER, Esq.,
Commissioner.

The claim of HENRY HYER KNOWLES, as Administrator of the Estate of Gertrude Lalla Rookh Knowles, deceased,

6081

AGAINST

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

NEW YORK, Dec. 29th, 1902.

APPEARANCES:

Messrs. ALEXANDER & COLBY (Mr. Merriam) for the Claimants.

6082 EDWARD K. JONES, Esq., Mr. HALDANE and Mr. KOPF for La Compagnie Generale Transatlantic.

HENRY HYER KNOWLES, being duly sworn and examined as a witness on his own behalf, testifies:

By Mr. Merriam:

Q. Were you present the day your wife sailed on *La Bourgogne?* A. Yes, sir.

Q. About what day was that? A. The 2nd of July, 1896.

Q. Did your daughter sail with your wife? A. 6083
Yes, sir.

Q. What is her name? A. Gertrude Lalla Rookh Knowles.

Q. She was about how old? A. She was in her fourteenth year.

Q. On the day she sailed, tell me briefly what occurred? A. We left the Waldorf in the morning, I think about ten o'clock, if my impressions are correct; the steamer, I think, was advertised to sail at noon. We drove to the dock and I saw my family on board the steamer. When they rang the bell for all ashore I came over and stood near the gang plank. The steamer was delayed somewhat, I 6084
think, by waiting for some emigrants or something of that sort. I was standing alongside of a police officer when these men went aboard the steamer on the passenger gang plank instead of the steerage. The steerage gang plank had been taken in and the steamer was ready to sail.

The rest of the answer is stricken out by consent.

Mr. Merriam: We desire to prove simply that Mr. Knowles saw his wife and daughter on board the steamer and saw them sail.

Q. Did you see the baggage of your wife put on 6085
board the *La Bourgogne?* A. I saw the baggage on the pier, the four trunks, and it was not left on the pier. I presume, of course, it was put on board the steamer. They were putting baggage aboard. I got the checks for the baggage from the Steamship Company, from the man on the dock, and gave them to my family, and I presume the baggage was put on board the steamer.

Respondent's counsel objects to what the

witness assumes was done, and asks to have that portion of the answer stricken out. 6086

The Commissioner: Let it stand.

Q. Did you give your wife any sum of money to take with her on her journey? A. Yes, before leaving Chicago I gave my wife $1,000. I did not expect to be able to get to New York to see them off. I had been ordered by my Company to Iowa on some business, and my family were to sail on Saturday and I did not expect to be able to get to New York, but matters so shaped themselves that I got here on Friday night. Out of the $1,000 she paid her passage. Her tickets were bought in Chicago, at the ticket agency there, on Clark Street. 6087 Between $700 and $800 she gave me to get changed into French money for her. Her idea in getting the French money was that she would get more money than she would by getting it in exchange, so she changed this money into French currency. I got some at the Waldorf, and some of the smaller currency at the dock before sailing.

Q. That was French gold and paper money? A. Yes, francs, French gold, silver and paper.

Respondent's counsel moves to strike out this testimony as to what money was given the claimant's wife, on the ground that no claim has been made for loss of money. 6088

The Commissioner: Let it stand.

Q. Then you know of your own knowledge that she had upon her person about that sum? A. Between $700 and $800. American money, which was converted into French money.

Q. She had it in French money when she went aboard the steamer? A. Yes.

Q. Were Letters of Administration granted to you by the Surrogate's Court of New York County

upon your wife's estate? A. I understood so, yes. 6089
I made the application for them and I understood that my attorneys got them.

Mr. Merriam: I will offer them in evidence at a later date.

Q. Will you mention some of the other personal property which Mrs. Knowles had with her at the time she sailed on *La Bourgogne?* A. She had one Russian Sable coat that I paid $1,200 for; she had a ball dress that I had made that I paid $250 for; she had seven diamond rings valued at from $150 to $500.

The Commissioner: You say $150 to $500. You mean apiece? A. Yes, sir, apiece. She had a gold 6090
bracelet with a diamond and watch in the top of it that I paid $150 for, second-hand; she had a diamond bracelet that cost $350; she had a fur-lined opera wrap, I cannot state positively just what I paid for that, somewhere between $150 and $200. I have made a memorandum as I thought of the things.

Respondent's counsel objects to the use of any memorandum.

The Commissioner: The witness may testify to all he can from his recollection.

A. (Continued.) She had a black lace gown that 6091
I paid $300 for. She had two tailor-made suits I paid Redfern, I think, $175 for one and $125 for the other; she had at least a dozen and a half lace handkerchiefs ranging in price all the way from $5 to $25 apiece: I presume at least one dozen pair of silk hose from $1.75 to $7 or $8 apiece. I know I am within the bounds when I say she had half a dozen suits of silk underwear that cost at least $10 apiece; she had easily half a dozen hats that ranged in price from $15 to $40.

6092 Q. Did she have any trunks? A. She had four trunks—five trunks,—three large ones and two steamer trunks. She had a pair of lorgnettes that cost me in the neighborhood of $200, they were jewelled.

Q. Did she have any small luggage? A. She had a traveling bag that I bought in London, a pigskin traveling bag with ladies' toilet articles, silver brush and everything of that kind in it, I don't remember just what I paid for that,—somewhere in the neighborhood of 20 or 25 pounds—over $100.

Q. Is that all that you recall? A. That is all that I can remember. She had some teagowns,
6093 dressing gowns, a very handsome tea gown that I should suppose was worth $40 or $50, and two or three dressing gowns. Easily half a dozen handsome silk waists, and various and numerous other things I don't remember.

Q. Did your daughter have any trunks or personal property with her?

Mr. Kopf: Objected to. No claim has been made here for the daughter's effects. This claim has been put in as Administrator of Mr. Knowles' wife. We have had no notice of any claim for his daughter's effects.

The Commissioner: What is the claim for?

6094 Mr. Merriam: $2,000, for personal effects

The Commissioner: You have already proved more than that.

The Witness: I did not know that a claim was made for $2,000. That was done in my absence, I presume. I think the personal effects were easily worth $10,000.

Q. What is your business? I am connected with the Equitable Life Assurance Society of the United States.

Mr. Kopf: I move to strike out all the testimony 6095
except what was paid for these articles. The present value of them should be the market value.

The Commissioner: I will let it stand.

Q. What is your official title? A. Southern manager of the Society.

Q. Have you been connected with the Society for many years? A. In my thirty-seventh year.

Q. In connection with and in the performance of your duties you have been variously assigned to different positions in the United States? A. I visit almost every State and Territory in the United States sometime during the year. I have really been the Lieutenant of the Second Vice-President, 6096
who has charge of the Agency work of the United States. I am on the go almost all the time.

Q. Are you paid well for these services? A. I don't think I am paid what I am worth, but I get a pretty good salary.

Q. You make a good deal of money? A. About $15,000 a year.

Q. Has that continued for a number of years? A. That is a good deal less than I used to make; at one time I had in connection with my duties, an agency. I solicited life insurance. I have made as much as $10,000 in New Orleans in two months' time out of the business. 6097

Q. Mrs. Knowles, prior to the accident, had resided in Paris, had she? A. Yes, my little daughter was being educated there.

Q. And for how many years had she lived abroad? A. The best part of eight years.

Q. You had an apartment there at the time of the accident? A. Yes, sir.

Q. Where was that apartment? A. 4 Rue Chalgren.

Q. Where is that located? A. Just back of the Arcade Triomphe, and a block off the Bois.

6098 Q. Can you mention some of the gowns which you testified were lost which you know had not been worn by Mrs. Knowles? A. The ball gown she had made to wear at the Carnival at New Orleans and was taken sick at my home at Pensacola, Florida, and could not attend the ball, and she never had that gown on except to try it on. Most of her wardrobe was new. She came over to spend the holidays with me; I could not go to Europe that year on account of the business, and she had replenished her wardrobe almost completely new before leaving Paris and London, and expected to go back in April, but owing to a runaway accident in Chicago,
6099 where she was thrown out of the buggy and had two or three of her ribs dislocated, she was unable to travel until July.

Q. Is that ball gown the only one? A. The only one that I remember of that was not worn, yes.

Q. But the others were slightly worn? A. All of them were comparatively new. Coming home to spend the holidays, she had replenished them. The jewelry, the diamonds and pearls, were worth more money than when they were bought, because that stuff has always increased in value. You pay more for a diamond or pearl to-day than you did seven or eight years ago.

6100 Respondent's counsel moves to strike out the answer in regard to the jewelry.

The Commissioner: Let it stand.

Q. You spoke of purchasing tickets for your wife and daughter in Chicago, at the Company's Agency there? A. On Clark Street, or Dearborn, I don't remember which. I think it was Clark Street.

Q. Did you, yourself, pay for them? A. No, my wife paid for them. I left her in Chicago to go West, and I gave her this money and she bought her tickets at the steamship office. I could go to

the place in Chicago, my impressions are it is on 6101
Dearborn or Clark Street.

Q. She paid for the two tickets out of the money which— A. Which I had given her.

Mr. Kopf: Objected to. The witness has no personal knowledge whether she paid for them or not. He says he was not in Chicago at the time.

The Commissioner: Let it stand.

The Witness: Their names were on the passenger list and they went aboard the steamer.

Q. When you gave this money and these various articles to which you have testified to your wife you gave them to her absolutely, did you? A. Yes, 6102
sir.

Objected to. There is no testimony in the case to show that he gave these articles to his wife; and also is leading. Objection overruled.

Q. In point of fact, this money or these articles to which you have testified—the articles you paid for out of your own money and made them a present to your wife? A. Yes, sir.

Cross-examined by Mr. Kopf:

Q. When did you order the tickets for this voyage? A. It was some time the latter part of June, 6103
I went into the steamship office there and got the diagram of the vessel and selected the cabin for my wife and daughter, and took it to her. She was not able to do much walking around, owing to the accident that she was in; had her collar-bone dislocated and two ribs broken; so I went down to the steamship office in Chicago and got the diagram and took it to my wife, and she afterwards got the tickets herself

Q. After you ordered these tickets, as I under-

6104 stand your testimony, you left Chicago? A. I went to Des Moines, Iowa, on business, yes, sir.

Q. And you didn't see your wife and daughter again until—? A. I met them in New York.

Q. The night before the sailing? A. I think I got here on Friday afternoon, as near as my memory serves me; I think I got in on that Limited, five or six o'clock Friday afternoon. The boat sailed Saturday at noon.

Q. You have traveled very extensively about the United States?

Objected to. Objection overruled.

6105 A. Yes, sir.

Q. And have bought your tickets or ridden on a pass? A. Buy a ticket, sir.

Objected to as immaterial and irrelevant.

Q. Have you ever read any of the conditions on these tickets? A. Railroad tickets, you mean?

Mr. Kopf: Yes.

Objected to. Objection sustained.

Q. Have you ever purchased tickets to cross the ocean? A. Yes.

Q. Have you read any of the conditions on those
6106 tickets?

Objected to. Objection sustained.

Q. You know, do you, that companies carrying passengers by steamer or rail usually insert limitations as to the value of any property that is lost?

Objected to as immaterial and irrelevant.

The Commissioner: What is your point?

Mr. Kopf: I want to show that this witness had knowledge that there was a limitation in the tickets. I was permitted to show it in the Perry case, and

Mr. Perry testified that he had been in the habit of 6107
purchasing these tickets and that he knew there was some such limitation. I want to prove the same thing by Mr. Knowles.

Allowed.

A. As a business man I know of course that companies have some conditions limiting themselves to as little as possible.

Q. And among those conditions as to what they will pay in case of loss of baggage?

Objected to.

A. I don't know as to that, sir. 6108

The Commissioner: The witness has answered it already.

Q. Do you mean to say that you didn't know that if you lost any article on this steamer that the company would interpose a defense in case your claim exceeded a certain amount stipulated for, that they would pay it?

Objected to. Objection overruled. Claimant excepts.

A. As to this particular steamship company, I don't know. I know as a general thing that steamship companies and express companies and telegraph companies all limit themselves as closely as possible their liability; I don't think I ever read a railroad or a steamship ticket through in my life. I usually find that I can occupy my time a little better than reading the conditions of a ticket. 6109

Q. You have traveled on the steamers on the French Line, haven't you? A. Yes, sir.

Q. Very often? A. I think I have crossed on them probably four times; possibly more.

Q. How long do you think you had traveled on

6110 them before the accident? A. Within two years, and possibly within a year.

Q. Did you ever see any of the bills for these articles that you testified that a certain sum was paid for? A. I paid most of the bills; I guess I have seen them.

Claimant's counsel moves to strike out all the testimony in regard to the tickets and the limitations for loss of property, on the ground that there is no claim made for any such limitation by the petitioner and nothing in the case that shows that there is any such limitation.

6111 Motion denied. Claimant excepts.

Q. As I understand your testimony, most of these articles were purchased abroad? A No, sir; most of the articles were purchased in America; a great many of them were purchased abroad when I was abroad with my family.

Q. Which of them were purchased abroad? A. I remember the fan-chain with pearls was purchased in Paris; that was a chain with pearls that they use for a fan or for a lorgnette; and the watch for $150 I purchased in Paris from an American who was hard up. Tiffany told me the watch was worth $250 when it was new.

6112 Q. What was the name of the American that you purchased the watch from? A. Wood is the man's name.

Q. Is he a New Yorker? A. Yes; I think New York is his home; it is my impression.

Q. Is he here now? A. I haven't heard of him in ten years.

Q. You bought it ten years ago? A. Yes; 1894 or 1895; probably seven years ago.

Q. Where was this Russian sable coat purchased? A. That was purchased in Paris.

Q. Did you buy it? A. My wife bought it. 6113

Q. How was it paid for? A. We paid $1,200 for it.

Q. How did you pay for it? A. Yes; I sent her the money to pay for it.

Q. You never saw the receipted bill for it, did you? A. No; I don't know that I did.

Q. All you know about it is that she wrote you she bought a Russian sable coat and wanted $1,200 to pay for it; is that all? A. No. I know that she had the receipted bill for it. The coat was $1,500 and she bought it finally for 6,000 francs, $1,200.

Q. But you never saw this receipt? A. No; I had no occasion to see the receipt; I saw the coat. 6114

Q. When was that coat purchased? A. My impressions were that coat was purchased in 1897.

Q. The year before the accident? A. Yes; it may have been in the fall of 1896; I think it was 1897.

Q. Where was the ball-dress purchased? A. That was purchased in 1897.

Q. Where? A. In Paris.

Q. Were you present when it was purchased? A. I was not.

Q. When it was paid for? A. I was not.

Q. Where was the fur-lined opera wrap purchased? A. I don't know whether that was purchased in London or whether it was purchased in 6115 Paris.

Q. Were you present when it was purchased? A. I was not.

Q. Or when it was paid for? A. No.

Q. Where was the black lace gown purchased? A. I don't know whether that was gotten in London or Paris.

Q. Were you present when it was purchased? A. I was not.

Q. Or when it was paid for? A. I was not.

Q. Where were the tailor-made suits purchased?

6116 A. One was purchased in London and one in New York.

Q. You have stated that $175 and $125— A. Yes; I paid for that.

Q. You paid for those personally? A. Yes.

Q. How did you pay for them? A. Currency.

Q. Not by a check? A. I never use checks. The Equitable Life has been my banker for thirty-seven years; I don't use checks; I draw the money from the company when I need money.

Q. You draw a voucher on the company, don't you? A. No; no one can draw a voucher on the Equitable Life excepting an executive officer. Our
6117 accounts are made out and audited and we are given the money for them or a check on which we get the money.

Q. Where was the tailor-made suit purchased in New York? A. One was purchased at a man named Roseberg's, as near as I can remember.

Q. Do you remember when it was purchased? A. No; I don't know the exact date; whether it was purchased before going to the west; it was just before she was—some time in December or January before we went west or south; we went from the south to the west; we went south and then west.

Q Where was the gold purse purchased? A. In
6118 Paris, I told you; I paid the man $150.

Q. The purse? A. Yes; with the watch in the top of it; set with jewels.

Q. Where were the diamond rings purchased? A. This jewelry was the accumulation of nineteen years of married life; some of the jewelry was purchased at Tiffany's; some was purchased at Goodrich's in New Orleans; some was purchased at Spaulding's in Chicago; and others were purchased in San Francisco—just where I happened to be; some were purchased in Atlanta, Georgia.

Q. How many of these articles did you pay $150

for? A. The cheapest one was $150; that was a 6119
stone probably of a carat or a carat and a quarter; but that was the smallest diamond she had.

Q. Describe these articles and tell as well as you can what they were worth? A. One was a solitaire; one was a cross-bar with three stones; that ring, my impressions are, was five hundred and some odd dollars; the ring was set with three diamonds. Another was a marquise set with diamonds; then she had a ring something of that character (indicating), a small guard ring set with diamonds and cat's-eyes. It has been four years since I remember to have seen anything about the rings, and I can't give you any nearer description 6120
of them; I have no means of refreshing my memory except just what I remember about them.

Q. Didn't you make a memorandum of the articles at the time that you gave the case to Alexander & Colby? A. No, sir.

Q. And if your counsel has sworn that he has fixed the value of these articles and the articles which he mentions in the claim from letters and memoranda from you, there is a discrepancy there, isn't there? A. Mr. Alexander I talked with in regard to my claim, and probably mentioned to him as I have here; it was fresher in my memory at that time as to just about what the baggage consisted 6121
of. I don't remember ever giving him any memoranda or his ever asking me for any. I didn't know that the claim that they had put in for personal articles was only $2,000. I was surprised when I got back here and they told me that was the amount of the claim that they were putting in against the steamship company.

Q. Do you know whether Mr. Alexander made any memorandum in your presence of these articles at the time you had a conversation with him? A. I really can't tell you, sir; I had two or three

6122 talks with Mr. Alexander. I am in New York to-day and I am liable to get a telegram to go to Omaha or some other section of the country to-night. Mr. Alexander would catch me when I was in town for a little while; I would go to his office and have a talk with him, and he would say, "I want to see you to-morrow or next day;" I would be called out of town and was probably out of the way when he wanted to see me.

Q. Where was the diamond bracelet bought? A. That was purchased in Atlanta, Georgia.

Q. Were you present when it was purchased? A. I was; yes.

6123 Q. And when it was paid for? A. Yes.

Q. Do you remember the name of the seller? A. Yes, I do remember him, because I insured him afterwards; Freeman & Crankshaw are the jewelers.

Q. Where were the lace handkerchiefs purchased? A. They were purchased principally in Paris. My wife would buy the lace, the most of it; she was quite handy with her needle; she would buy the lace by the yard and the material for it; and most of these handkerchiefs she would make herself. I have had occasion to buy some similar handkerchiefs for Christmas presents here recently, and I

6124 know that these handkerchiefs run from $10 to $20 or $25, $30 or $40 apiece. That was one of her fads. She was very fond of fine lingerie.

Q. Then the amount that you have fixed is simply what you think? A. What would have to be paid for them.

Q. All the underwear and hose were purchased on the other side, weren't they? A. Some of the hats—three of them, as near as I can remember—the reason that my memory is so fresh about the hats and underwear, I have a sister who is visiting me here from the South now, and my family,

womanlike, take more interest in a woman's ward- 6125
robe than a man does; and she was telling me, recalling to my mind the different hats that my wife had. I said she had a half a dozen handsome hats, three of them were bought here. One, I remember, was bought of this man Lichtenstein. I remember that hat; it had a bird of paradise on it; I paid $40 for it. Another hat was bought from Mme. Louise here, an evening hat; I remember that creation cost $30.

Q. The underwear and hose you think were bought on the other side? A. Undoubtedly that silk underwear and silk hosiery she would buy in Paris. 6126

Q. You weren't present when they were bought or paid for? A. No, sir.

Q. Where were the dressing-gowns and silk waists bought? A. I think one of the dressing-gowns was bought in London; the other, I presume, was bought in Paris. Most all of her shopping was done on the other side; she did very little shopping in America, except when things were absolutely necessary, or I would see something that would attract me and buy it for her.

Q. And bought when you were not about? A. As a rule, yes; although I was very fond of shopping with her, and used to shop with her a great deal. 6127

Q. When did your wife come to the United States previous to the disaster? A. As near as I can remember, it was in November or the first part of December. She came over to spend the holidays with me, and they came over on the same ship that they were lost on. It was the captain of this vessel expressed to me his great pleasure at having them go back with him; that my little girl was quite an attractive child, and he gave her the seat to his right and was very fond of her coming over on the voyage; and he expressed great delight at having

6128 her go back with them. I didn't want them to go on the French Line. I had crossed on the *Touraine* only a short time before, and we came very near running into an iceberg, and that kind of shook my faith in the good seamanship of the French sailor, although I enjoyed their cooking and their life on board of the French Line.

Q. And she had all of these things that you have testified to bought in London and Paris with her when she came over? A. Yes, sir.

REDIRECT BY MR. MERRIAM:

Q. On the morning that your wife sailed on *La*
6129 *Bourgogne* were you present when her trunks and your daughter's trunks were locked up? Did you see the trunks packed? Did you see these things put in the trunks? A. Yes, sir; I locked the trunks for her; they were pretty well packed and I saw the steamer trunks in their cabin and the other trunks on the dock ready to go aboard the ship, and there were no trunks on the dock after the ship sailed that I could see, and they had the checks for them.

Q. For instance, do you remember whether this sable cape—was that a sable cape or a sable cloak? A. A short cape. There was also a sealskin muff,
6130 I remember, and something for her neck which was not sable; it was sealskin.

Q. Did you see the sable cape, for instance, put in the trunk and packed away? A. No; I don't know whether she took that in her hand or whether it was in the trunk; I don't remember; she had the cape with her, either in the trunk or in her hand; she may have carried the cape in her hand; it was cool aboard the ship sometimes in the evening, and she may have taken it along for that purpose.

Q. To have it outside and not have it go down in the hold? A. Yes.

RECROSS BY MR. KOPF: 6131

Q. Were all the trunks in the Waldorf in the rooms that you were occupying? A. Yes, sir.

Q. All of them? A. Yes.

Q. And all of the things taken out and put back again? A. You mean her trunks unpacked when she came from the west?

Q. Yes. A. That I can't say. I presume not. It was summer time and she had a lot of heavy clothes that she couldn't use at that season of the year. Her trunk was a very large one, and my impressions are that the stuff that she wasn't using was packed in the bottom of the trunks, and the stuff she was using was in the trays. 6132

Q. As a matter of fact, most all the trunks were packed in Chicago, if at all? A. They were of course packed in Chicago, and I presume they were not completely unpacked in New York.

Q. How much did the tickets cost, do you remember? A. My impressions are that they paid $75 apiece. My wife suffered terribly with the sea, and so did my little girl, and in former years we used to take a more expensive cabin up on the promenade deck but she concluded that as she was sick anyhow and couldn't enjoy the cabin, that she would rather have the difference in the passage money in something else, and consequently we would take a 6133 room on the main deck.

Q. Where did you change this money into French money that you have testified to? A. Some they got for me at the Waldorf, and I think my impressions are that $500 of it was gotten at the Waldorf by the cashier there for me the night I got in, on Friday evening; and the next day at the dock at the steamship company's office on the dock, where they sell French money, I got some silver, gold and small money, louis and things of that sort—enough

6134 in small money for her to pay the tips for the stewards, etc.

Q. Did she wear this jewelry as she went on the steamer? A. No, sir; not all of it; she had most of it around her neck in a leather bag.

Q. Do you know whether any of this jewelry or money was given to the purser of the ship? A. I do not, sir.

Q. It wasn't given to him while you were there?

Objected to. Objection overruled. Claimant excepts.

A. I don't know.

6135 Q. You attended to all the arrangements there, didn't you, for making your wife comfortable? A. No, sir; as I told you, I got in only the night before she sailed.

Q. On the morning the vessel sailed? A. No; I saw them aboard there, saw that their stuff was put in their cabin, and then we went on deck to say good-bye to each other. The steamer expected to sail within a short time.

By Mr. Merriam:

Q. Do you know of your own knowledge that these effects that you have testified to, such as your wife

6136 did not have upon her upon, were in the trunks which she took with her? A. Yes, sir.

Objected to; the witness has already testified that he didn't know, and didn't see them packed in Chicago, and they weren't unpacked in New York.

Q. Did you testify that you didn't see these trunks packed?

Objected to; the testimony will speak for itself. Allowed.

A. No. I understood the gentleman's question 6137
to mean if I had seen these trunks thoroughly packed at the Waldorf. I said my wife may have unpacked the trunks and repacked them again after she got here; but there was a great deal of stuff out of the trunks, and they were unpacked when I got here that night, and she packed them and I locked them and called the porter up and helped strap them, and sent the stuff down by the porter to the dock. Whether she had entirely unpacked and repacked the trunks that, of course, I can't say. The probabilities are that she may have rearranged her trunks after she got to New York.

6138

By Mr. Kopf:

Q. How long was she in New York? A. My impressions are about three or four days. I think she left Chicago on Monday, if my memory served me right. I think she was at the Waldorf three or four days. Their records, of course, would show just how long she was there; I don't remember.

Q. Did you ever file an accounting of your wife's estate? A. I don't know; I have done nothing except through my counsel; I really don't know whether they have or not.

Mr. Merriam: I will ask the Commissioner to find 6139
for loss of life of Mrs. Knowles as well as the loss of property.

The Commissioner: The question of loss of life is not referred to me.

It is agreed that the letters testamentary are to be shown to counsel, and the granting of the letters is admitted subject to further exception by counsel for the petitioner.

With the exception of the production of the letters testamentary, if called for, or a certificate of their issuance, counsel for claimant rests.

Adjourned to Friday, January 9, 1903, at 2 P. M.

6140 NEW YORK, January 22, 1903.

Met pursuant to adjournment.

Present—The COMMISSIONER;
Mr. MERRIAM, for Knowles;
Mr. KOPF, for the steamship company.

Counsel for Knowles, as administrator, offers in evidence the original letters of administration granted to Henry Hyer Knowles, on the goods, chattels and credits of Gertrude Lalla Rookh Knowles, deceased, on December 6, 1899, by the
6141 Surrogate of the County of New York.

It is marked Claimant Knowles Exhibit 1, January 22, 1903.

Adjourned to Thursday, January 29th, at 2 P. M.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

6142 OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE owner of the steamship "LA BOURGOGNE," for limitation of liability.

SIRS:

Please take notice that the petitioner above named hereby objects to the allowance of the claim

filed with the Commissioner in this cause by Pauline Henuy, as administratrix of Juliette Cicot, deceased, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases. 6143

Dated New York, April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
A. GORDON MURRAY, Esq.,
Proctor for Claimant. 6144

(Endorsed)—Nature of objection to Claim of Pauline Henuy, as Admx., etc.—Filed Apr. 23, 1902.

6145

6146 Before THOMAS ALEXANDER, Esq., U. S. Commissioner.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE to limit its liability as owner of the steamship "LA BOURGOGNE."

6147

NEW YORK, August 26th, 1902.

Present—The COMMISSIONER;
FREDERICK KOPF, Esq., of counsel for petitioner;
A. GORDON MURRAY, Esq., for Pauline Henuy, administratrix of the estate of Juliette Cicot.

PAULINE HENUY, the claimant, being duly sworn, testifies, through Silvio Bonnani, an interpreter,
6148 who was also duly sworn, as follows:

Mr. Murray: I offer in evidence the testimony of Ernest Scol, second purser of the steamship *La Bourgogne* at the time of her accident, taken out of court in proceedings heretofore had, in so far as it goes to show that Juliette Cicot, the claimant's intestate, was on the vessel at 11 o'clock on Sunday night prior to the loss and destruction of the vessel at sea on July 4th, 1898.

Mr. Kopf: I object to its being received in evidence. Ruling reserved.

Mr. Murray: I also offer in evidence a certificate 6149
furnished by the acting general agent of the company in the United States and Canada, dated August 4th, 1898.

Mr. Kopf: I object to its admission on the ground that it does not identify this deceased.

Objection overruled; exception.

Received in evidence and marked "Claimant's Exhibit A" of this date.

DIRECT-EXAMINATION BY MR. MURRAY:

Q. What is your name? A. Pauline Henuy.

Q. Have you been appointed the administratrix 6150
of the estate of your daughter, Juliette Cicot? A. Yes, sir.

Q. By the Surrogate of New York? A. Yes, sir.

Mr. Murray: I offer in evidence copy of the letters of administration issued to Pauline Henuy.

Received in evidence and marked "Exhibit B" of this date.

Q. Have you acted as such administratrix since your appointment? A. Yes, sir.

Q. And are still acting as such? A. Yes, sir.

Q. When did you last see your daughter? A. The day that I took her to the boat. 6151

Q. Where was she? A. She was up on the main deck.

Q. Of what boat? A. *La Bourgogne*.

Q. Had the *Bourgogne* left her dock? A. Yes, sir; I saw her up to the last minute before the *Bourgogne* sailed away.

Q. Are you familiar with the effects that your daughter had with her upon the *Bourgogne* when she went away?

Mr. Kopf: I object to that question on the ground that this witness is not competent to testify, under

6152 Section 829 of the Code of Civil Procedure, being a party in interest here, and she cannot testify to any transactions concerning the deceased.

Objection overruled; exception.

A. Yes, sir.

Q. What were the nature of those effects?

Same objection, ruling and exception.

A. She had linen wrappers, costumes, shoes, jewels, diamonds, money—currency—that is about all.

Q. What was your daughter's name? A. Juliette
6153 Cicot.

Q. What was her business—was she engaged in business of any kind? A. Yes, sir.

Q. What business? A. Dressmaking.

Q. Under what name did she do business? A. Madame Juliette Cicot.

Q. Did she have a large business, or a limited business? A. Her business was growing quite some, and she had a large establishment.

Q. Did Juliette have with her, when she went aboard the *Bourgogne,* to your own knowledge, a certain amount of money, or currency? A. Yes; I recollect seeing about 8,000 francs with her.

Q. You say that you recollect that you saw it;
6154 state what you saw? A. I saw the amount when she counted up the money on the table; I recollect the fact that she received a few checks which she changed into money, and I saw her count the whole amount.

Q. When was that? A. About three or four days previous to sailing away.

Q. Did you see her take it aboard the *Bourgogne?* A. Yes.

Q. How did she carry it aboard? A. She carried it in a hand valise.

Q. Did she have anything else in the valise? A. 6155
She had jewels and she had her own ticket, all in the same valise.

Q. What jewelry did she have with her? A. She had one diamond ring with five stones in it; then another ring with a diamond stone and two pearls.

Q. What were they worth, to the best of your knowledge?

Objected to. Objection sustained. Exception.

Q. What other jewelry did she have? A. She had diamond buttons, also a gold watch.

Q. What did she have with her? A. She had two 6156
diamond buttons.

Q. How many rings did she have? A. Three rings altogether.

Q. What kind of rings were they? A. There was the one I have already told you about, with five stones, and the other that I told you about, with one stone and two pearls, and then the marriage ring.

Q. The one ring with five stones, what kind of stones were they? A. They were all diamonds, and the ring was worth about—

Objected to witness testifying as to their value. 6157

Q. Do you know what she paid for any of those rings, or what was paid for them? A. I don't know that she paid for them, as they were given to her.

Q. Was there other jewelry? A. She had a plain gold bracelet.

Q. What else? A. And another silver bracelet; she had also a gold watch, and a watch chain of silver and gold.

Q. Do you know what was paid for either or any of them? A. I cannot recollect.

6158 Q. Have you any idea how large the diamonds were that she had in those rings? A. I recollect the ring, because I had it estimated once, and I know it was worth over $100.

Q. Where did you have it estimated? A. At Saratoga.

Q. Did you have it estimated by a jeweler? A. Yes; my daughter had some repairing done to the ring by a jeweler in Saratoga, and I asked him the value of the stones, and he told me they were worth over $100.

Q. What was that jeweler's name? A. I cannot recollect his name, but he has a large business in
6159 Saratoga. This happened about ten years ago.

Q. With regard to her clothing and personal effects, do you know what she had? A. I recollect that she had about $200 worth of linen alone.

Q. What did that consist of? A. She had at least one dozen of chemises, at $2.00 a piece; she had several silk petticoats; she had drawers, night shirts, corset covers and handkerchiefs.

Q. Did she have any gloves? A. Yes, sir.

Q. How many trunks did she have? A. Two.

Q. Were they in good repair? A. They were both new.

Q. Have you any idea what they cost? A. I rec-
6160 ollect she told me she paid $10 each for the trunks.

Q. What kind of trunks were they? A. They were made of wood.

Q. Were they large dress trunks? A. They were both large trunks.

Q. What dresses did she have, if you know? A. She had about eight different costumes.

Q. When you speak of "costumes" you mean regular dresses? A. Yes, sir.

Q. What were they? A. Two in mousseline de soie; two other dresses were made of cloth. She had another fine dress in gray, embroidered with

green and gold pearls. She had another white muslin dress besides, and she had two dresses for the house—eight altogether—and she had a foulard cloak. 6161

Q. What were these cloth dresses—what kind of cloth were they made of? A. Fine cloth.

Q. Have you any idea what it cost per yard? A. I recollect that she made some of these costumes for herself from some goods that she brought over for other customers.

Q. Do you know what the goods cost? A. All I know is that my daughter often told me that these costumes used to cost her in the neighborhood of $120 a piece. 6162

Mr. Kopf: I move to strike the answer out.

Motion granted.

Q. They cannot be made any cheaper? A. No, sir.

Mr. Kopf: I move that the answer be stricken out.

Motion granted.

Q. Do you know anything of the value of goods and the value of dresses? A. Yes, sir; I do, because I am a dressmaker myself.

Q. Had you been working with your daughter Juliette? A. I didn't work; I was not doing anything. 6163

Q. But you lived with your daughter? A. Yes.

Q. And you were familiar with her business? A. Yes, because I have always been a dressmaker.

Q. Do you know, of your own knowledge, about what those dresses that Juliette had were worth?

Objected to. Objection overruled. Exception.

6164 A. Yes, sir.

Q. Can you say of your own knowledge, about the value of those dresses and clothing that Juliette had with her, which you have testified that she had with her on *La Bourgogne?*

Objected to as incompetent. Objection overruled. Exception.

A. Yes, I can.

Q. What would you say that the linen that she had with her was worth?

Question objected to as too indefinite. Objection sustained.

6165 Q. Will you please state, as far as you can recollect, begin at the beginning and state everything that she had with her, and give what you know, of your own knowledge, to be its value. In the first place, did you ever make up a memorandum of about what they were? A. There were twelve shirts that were worth $2.00 apiece; half a dozen night shirts; six corset covers and two corsets.

Q. What were the gowns worth? A. $2.00 apiece for the nightgowns.

Q. How much were the corset covers worth? A. They were worth $7.00 altogether.

6166 Q. And the two corsets? A. Two corsets were worth $8.00 apiece. Then there were six pair of drawers at $2.00 apiece; six muslin petticoats, at $4.00 apiece; two bed robes at $5.00 apiece. There were two dozen handkerchiefs, worth about $6.00 altogether. She had four corset covers that she was taking to France, which were worth $15 apiece; they didn't belong to her, but they were worth $15 apiece.

Q. To whom did they belong?

Mr. Kopf: Objected to on the ground that this 6167
claimant has no right to recover for anybody else's property.

Objection overruled; exception.

A. To Mrs. Vatable.

Q. Was Mrs. Vatable a customer of your daughter? A. Yes, sir.

Q. For what purpose did Juliette have these corset covers in her trunk? A. She was taking them to France to get them made bigger, because they were too small for Mrs. Vatable.

Q. Go on and state what else she had? A. Three pairs of shoes at $5.00 a pair; one pair of slippers, 6168
worth $3.00; one dozen of cotton and silk stockings at $2.00 apiece, making $24.

Q. You mean that they were worth on the average $2.00? A. They were worth $2.00 a pair, making $24.00 for the whole dozen.

Q. How many of them were silk? A. They were cotton and silk, mixed. Then there were handkerchiefs, and from 10 to 12 yards of blue cloth that she was taking back to France to have embroidered.

Q. How much was it worth? A. $2.00 a yard.

Q. Was that to be used in dressmaking? A. Yes, sir, she was to have it embroidered for some of her customers. Then there were a dozen of linen nap- 6169
kins, value $4.00. She had also cheaper napkins.

Q. Now, with regard to her dresses, specify what you know to be about their worth, each one of them? A. One of the two cloth dresses was worth $110 and the other $95. Then there was one in black reps, worth $68; and one dress of imported mousseline de soie, worth $80, and another one in muslin worth about $60.

Q. And then there was another muslin dress, with lace and silk, what was that worth? A. $80.

Q. Was there anything else? A. Two tea gowns.

6170 Q. What were they worth? A. Those two tea gowns were to be sold in Paris, one at $30 and the other at $45.

Q. Is that all that you can recollect she had? A. She had jewels.

Q. I mean just the dresses? A. She had three pairs of gloves.

Q. What were the gloves worth? A. $2.50 a pair.

Q. What kind were they? A. Long kid gloves. I know also that she bought other articles for presents she was going to make in Paris, but I can't recollect what they were.

6171 Q. Were you entirely dependent upon Juliette? A. Yes.

Q. Did you live with her for some time? A. Yes, I always lived with my daughter; I was living with her for the last seven years.

Q. How do you know that these things that you have described, were actually taken aboard the steamer *Bourgogne* on July 2nd, 1898? A. Because I saw these articles put in the trunks and sent to the steamer; I helped her to put them in the trunks.

Q. Do you know that these trunks left the house to go to the steamer? A. Yes; I saw both trunks
6172 on the ticket when my daughter sailed away.

Q. Did you see them on the steamer? A. I saw the trunks when they lifted them up aboard the ship.

Q. Did you see her get a receipt or a check of any kind for them, or do you know that she did? A. I saw somebody hand her a receipt for the trunks.

Q. Where was that? A. On the dock.

Q. Do you know whether it was a receipt from the company, or not? A. Yes, I am certain it was.

Q. Suppose they would say they didn't give re-

ceipts for trunks; are you sure that they were for 6173
the trunks? A. I recollect she told me, "Here is the receipt for my trunks, and everything is in order now."

Q. This valise that you speak of that she had, with the money and jewels in, what was the last you saw of that? A. I saw the bag containing the money and the jewels the last time on board the steamer.

Q. Did Juliette have them? A. Yes, my daughter had the bag in her hand.

Q. You were at the dock to see the steamer sail? A. Yes, sir, I was on the dock when the steamer went away. 6174

Q. I show you a paper, and ask you what it is (handing paper to witness)? A. This is a list of the last collections that my daughter made.

Q. In whose handwriting is it? A. My own daughter's handwriting.

Q. Did she tell you what it was? A. Yes.

Q. When was it made out? A. Eight days previous to her sailing away.

Q. Do you understand those to be collections of money that she had made——

Mr. Kopf: Objected to. Objection sustained.

Q. What do you know that memorandum to be? 6175

Objected to on the ground that the memorandum speaks for itself. Objection overruled. Exception.

A. They are all different bills which clients owed to my daughter.

Q. Were the amounts collected by your daughter? A. Yes, they are amounts collected by my daughter.

Mr. Murray: I offer the memorandum in evidence, as showing that the money testified to actu-

6176 ally came into the possession of Juliette Cicot before her departure.

Mr. Kopf: There is no evidence as to that except the statement of counsel.

The Commissioner: I will receive it.

Exception. Received in evidence and marked "Exhibit C" of this date.

Q. Who did you stay with while your daughter was away? A. I lived the first month with Madame Lecolins.

Q. Where did she live? A. I think it was at 64 Fourth avenue, where she used to live.

6177 Q. You don't recollect the exact number? A. No, but I know it was around Thirty-first street.

Q. When did you first hear that the *Bourgogne* had been sunk? A. On the Tuesday, in the street.

Further hearing adjourned to Thursday, August 28th, at 11 A. M.

NEW YORK, August 28, 1902.

Met pursuant to adjournment.

Present—THE COMMISSIONER and
COUNSEL, as at last hearing.

6178

In the matter of the claim of Pauline Henuy.

PAULINE HENUY, recalled for further examination:

Mr. Murray: I produce the notice of taking testimony and offer in evidence the certificate of the Surrogate's Court, showing that the appointment has not been cancelled.

Certificate marked Exhibit "D."

Mr. Murray: I also call attention to the testi- 6179
mony of the said Ernest Scol, page 458 of the Record heretofore offered in evidence.

Q. (By Mr. Murray) Now, Mrs. Henuy, I want to ask you one other question. Do you know whether your daughter, Juliet Cicot traveled upon a purchased ticket or a pass? A. She traveled on a ticket which she had bought.

Q. Have you ever had returned to you any of the baggage or effects that Juliet took away with her? A. I never received anything since she left.

Q. Have you ever demanded the baggage or effets from the Company? A. I never asked for the baggage at the Company's office, because I knew 6180
they were lost.

Objected to. Objection overruled.

Q. Did you ask them to reimburse you for the loss you had received, in toto? A. I asked for these things, and I asked to be reimbursed, but I was told I could not get anything because they could not help it.

Mr. Murray: Now, Mr. Commissioner, I offer to ask for a claim for causing the loss of life of this woman.

The Commissioner: I do not care to receive proof 6181
on that point as the reference is not for that purpose.

Mr. Murray: I offer proof to show that she was dead.

The Commissioner: I refuse to receive such proof, as not within the terms of the order of reference to me.

Cross-examination by Mr. Kopf:

Q. Who did you make this request for reimbursement from the Company to? A. I went to the office

6182 of the French Line, and I spoke to the gentleman that was taking the place of the General Director of the Company, who was at that time in France.

Q. Do you know the name of the man who was acting? A. No, I don't know his name, but I think he is the same party that sent me the telegram home, stating that my daughter was lost.

Q. When did you make this request? A. The day after the accident happened.

Q. What did you ask for there? A. I asked them what they were going to do about me, and I was told that all they could do was to give me a free passage to France and take up a collection for me.

6183 Q. Did you make any demand in dollars and cents? A. I did not ask for any money, but I only asked what kind of redress I could get.

Q. Now, do you remember signing a claim which you subsequently filed in this Court on the 25th of August (showing paper)? A. Yes, I recall it.

Q. Will you read the seventh paragraph of that claim, and tell me how much money you said you lost; how much cash? A. I can't recall about the figure that I set on that date, about the cash money that she had.

Q. The question is, how much did you say in that paper was lost in cash? A. $2,426.

6184 Q. Can you calculate $2,426 into French money? A. About 12,000 francs.

Q. Now, you testified before the Commissioner on Tuesday that your daughter had with her and there was lost 8,000 francs on the *Bourgogne*. How do you account for the difference in the figures?

Objected to because it does not comprehend what the witness testified to; that she said: "Yes, I recollect seeing about 8,000 francs."

Objection overruled. Exception taken.

A. I stated before the United States Commis- 6185
sioner Alexander the other day that the amount was 8,000 francs, the amount of the money I have seen, but I knew my daughter had other money besides, and I calculated that the whole amount was $2,426 altogether, but the amount I have seen was 8,000 francs.

Q. Will you swear now that your daughter had with her the equivalent of $2,426 in French money, and that that amount was lost? A. I can't swear to that; I cannot swear that she had $2,426, but I can swear to the amount of 8,000 francs, because I seen that amount.

Q. Where did your daughter carry on her busi- 6186
ness previous to the disaster? A. At 407, 9 or 11 Fourth avenue; I can't recall the number.

Q. Did she also live there? A. Yes, sir; we lived there together and she supported me.

Q. With her husband? A. No, sir; only us two.

Q. How long had you been living together at that place? A. About two years.

Q. Did you live there with her all that time? A. All the time with her.

Q. Did you work there during that time? A. No, I did not do practically no work at all, except the housekeeping; I took care of the housekeeping and the kitchen work.

6187

Q. You testified the other day that you were a dressmaker? A. Yes, it has been my business all the while, but I never did any work since I was established with my daughter.

Q. Where did you work as dressmaker? A. I worked in two different places in New York as dressmaker; with Madam James; in West Thirty-seventh street, between Fifth avenue and Sixth avenue.

Q. You never had any place of business of your own, did you? A. No, never.

6188 Q. You never had occasion to fix the value of clothes while you were employed as dressmaker in the places you were employed as dressmaker in? A. Yes, I did.

Q. Do you mean to say that when customers came in to these places and asked what it cost to make up a dress that you fixed the price? A. No, I did not mean to say that, but I knew the price of the different dresses; I knew that such a dress was sold at such an amount, and also that the other dress was sold at such an amount. It was not me that was selling them, but I knew what they were sold for.

6189 Q. Did you ever have occasion, while you were employed in the places you have mentioned, to buy goods for your employers? A. No, I never had any occasion to buy anything.

Q. How long were you employed in these places? A. About two years and a half.

Q. You were simply employed in these places to sew, weren't you? A. That is right, only to sew.

Q. You never came in contact with any of the customers, did you? A. No, never here; in France I did.

Mr. Kopf: I move to strike out the latter part of the answer, what was done in France.

6190 The Commissioner: Strike it out.

Q. During your stay with your daughter in Fourth avenue, did you meet the customers, or did you have occasion to buy any of the goods that were used in dressmaking? A. No, I never did, sir; but I knew that my daughter was chiefly importing of goods from France and she was telling me the price of them.

Motion to strike out as to what the daughter told her granted by the Commissioner.

Q. And you did not have anything to do with 6191
the fixing of prices of the goods sold in your daughter's place? A. No, it was not my business to do so.

Q. Now, in your testimony the other day you fixed the value of three dresses, one at $110, another at $95, another at $68. What were the materials of those dresses? A. One was made of fine cloth, imported.

Q. Which one was that? A. The $110 one consisted of very dear cloth, embroidered with green emerald pearls, and it was very stylish work.

Q. What kind of cloth was it? A. Very nice
cloth; I think it was worth about four or five dol- 6192
lars a yard.

Q. Do you know where the goods were purchased? A. No, I do not know.

Q. Were they made in your daughter's establishment? A. Yes, they were made in my daughter's establishment.

Q. Now, what was the $95 dress? A. It was also very fine cloth dress, embroidered with silk, some of the finest cloth also.

Q. What kind of cloth was it? All I know it was very good cloth, but I cannot describe the cloth.

Q. You cannot describe the cloth of the $110 dress, either? A. No, I cannot neither. 6193

Q. Do you know what the color of it was? A. Black, the $110 one.

Q. And the $95 one? A. They were both black, the $110 as well as the $95 one.

Q. How were they lined? A. All silk lined.

Q. Now tell me about the $68, and describe that? A. It was also black, but I cannot recollect the quality of the cloth, whether it was a serge or cloth or what, but I know it was a silk-lined dress and it was worth about that amount of money.

Q. Now, about the $80 dress; describe that? A.

6194 It was made of a certain kind of what we call in French, poplin, and the color was black and gray, and lined with silk also and it was trimmed with dentaille.

Q. And the $60 dress? A. The $60 one was violet and white and trimmed with dentaille also, and lined with white silk.

Q. And another $80 dress? A. It was also a black dress, and the corsage was embroidered with feathers.

Q. Do you know where your daughter bought all this underwear that you have testified she had? A. No, I do not know.

6195 Q. How long did she have it before she took it on the *Bourgogne?* A. Probably from eight to fifteen days.

Q. It was all brand new? A. Everything was brand new; she had nothing old; everything was brand new.

Q. How long have you lived in this country? A. Seventeen years.

Q. And your daughter lived here all that time? A. Yes, we came together from France.

Q. And your daughter married in this country? A. Yes, sir.

Q. What was her husband's name? A. Cicot.

6196 Q. What was his first name? A. Armend Cicot.

Q. Was he a citizen of France? A. Yes, he was a French subject.

Mr. Murray: I object to this as absolutely incompetent and immaterial and irrelevant, and move to strike it out.

Objection sustained, and the answer stricken out. Exception taken.

Q. What was the relation between your daughter 6197
and her husband at the time that she left for France?

Objected to. Objection sustained. Exception.

Q. Did your daughter's husband contribute to her support?

Objected to Objection sustained Exception.

Q. Do you know what class passage your daughter engaged on the *Bourgogne?* A. Second class.

Q. Where did she buy her ticket? A. I don't 6198
know where she bought the ticket; I did not follow her when she went to buy the ticket.

Q. You testified that among your daughter's effects were 12 yards of blue cloth. Do you know where that was purchased? A. No, I do not.

Q. How do you fix the price at $2 a yard? A. I examined the cloth myself, and to my knowledge I think it is worth that money.

Q. All these values that you have stated are simply fixed or based upon what you think they are worth? A. Yes, according to my own judgment they are worth that money?

Q. You have testified that there were some corset 6199
covers belonging to Mrs. Vatable in your daughter's effects. Was there any other property in your daughter's possession belonging to other people, and if so, what? A. No.

Q. What was the object of your daughter's visit to France?

Objected to. Objection overruled. Exception.

A. To do some buying.

Q. Buying of what? A. She was going to France

6200 to buy some cloth to make new dresses and buy some dresses, and to have some cloth trimmed and embroidered.

Q. What cloth trimmed and embroidered? A. There were 12 yards of cloth that she had with her to make some dresses for the winter.

Q. Coming back to the money that you say your daughter had with her, do you know where she changed or obtained the French money? A. I do not know.

Q. It was in French money? A. I saw the money in United States currency, and I knew she told me she was going to get the French money for it, but
6201 I did not see the French currency; I saw only the American currency.

Q. You testified here on Tuesday that you saw 8,000 francs in your daughter's satchel on the steamer?

Objected to that that is not what she testified to.

Minutes referred to are read to the witness as follows:

Q. I now read you the question and answer on Tuesday: "Did Juliet have with her when she went aboard the *Bourgogne*, to your own knowl-
6202 edge, a certain amount of money or currency?" and you answered: "I recall seeing about 8,000 francs with her." A. I said it was 8,000 francs, but it was American money that she had, and she told me they amounted to 8,000 francs.

Mr. Kopf: I move to strike out what she told her.

The Commissioner: I let it stand and deny the motion.

Q. Do you mean to testify that you saw the 6203
equivalent of 8,000 francs in United States money?
A. Yes, sir.

Q. In the satchel on the day that she left on the steamer; in the satchel on the steamer?

Objected to as putting words in her mouth, and that she has testified to nothing of the kind. Objection overruled. Exception.

A. No, once she was on board the steamer the satchel was never opened.

Q. The fact is that the last time you saw the 8,000 francs was in the house in Fourth avenue?
A. I did not see it in Fourth avenue, because we 6204
moved to Lexington avenue a few days previous to her departure.

Q. Well, in Lexington avenue; I change the question? A. Yes, it was in Lexington avenue that I practically saw the money in the valise the last time.

Q. And how many days was this before the vessel sailed? A. I see it the same day she left for France; the same day that the boat sailed, because she opened the valise on that day when she was leaving the house to put something more in it.

Mr. Kopf: I move to strike that out.

6205

Motion denied. Exception taken.

Q. You did not count it that day on the steamer, did you? A. Oh, no.

Q. You did not count it after the day that you saw it on the table in the room in the Lexington avenue house? A. No, I never counted it but once.

Q. How large was the satchel? A. About two feet long and about one foot wide.

Q. And how high? A. Like that (indicating 2 feet), with one handle.

6206 Q. She took the money from the table and put it in the satchel? A. Yes; she put the whole money in the bag.

Q. What was the denomination of the bills constituting the sum which you have stated?

Objected to. Objection overruled. Exception.

A. I cannot recall that.

Q. Do you know when these amounts were collected (showing exhibit "C")? A. During the last few days that she was in New York.

Q. Did your daughter keep any books? A. She
6207 had a certain ledger which she carried along with her in her trunk.

Q. Have you filed any account as administratrix in the Surrogate's Court?

Objected to. Question withdrawn.

Q. How long had your daughter been a dressmaker? A. About three years she was in business for herself as dressmaker.

Q. And she was two years in Fourth avenue; how long was she in Lexington avenue? A. She was three years in Fourth avenue, and in Lexington avenue only about three days.

6208 Q. Can you name the first names and addresses of these people mentioned on Exhibit "C"? A. No, I have no record and I could not tell you.

Q. Now, you can read your daughter's writing; will you spell out those names so they can be placed in the record? A. I really cannot read the first two myself. Verren, Cook.

Q. (By Mr. Murray) That is meant for McCook, isn't it? A. McCook, yes. Godf. meant for Godfrey; Gol., supposed to mean Godfrey again; Neeser, Neeser again; Broug. Gray; Bullay; Bradley; Gar; Alexandre. My daughter wrote that but I don't know what it is meant for.

Q. What was the number of the Lexington ave- 6209
nue place? A. I can't recall the number.

Q. Do you know whether your daughter handed this money to the purser on the ship? A. No, she did not give it to the purser.

Q. Who carried the satchel on board? A. Herself, my daughter.

Q. Who was with her? A. There was me, and about ten or twelve employees of my daughter; lady employees.

Q. Who is Madame Menard? A. She was one of the stewardesses on board the ship.

REDIRECT-EXAMINATION BY MR. MURRAY: 6210

Q. Was Madame Menard helping Madame Cicot, or was she her stewardess? A. She was the stewardess on the ship.

Q. Did Madame Cicot take her ticket aboard the vessel with her? A. I knew she had the ticket before and seen it before, but I did not see it on board the ship.

Q. Now you have stated that she had 8,000 francs. Are we to understand you to say that you simply designated that amount of money in those terms? A. It was American money, but it represented the total amount of 8,000 francs.

Q. Now, Madame, you have been questioned 6211
about your dressmaking experience, and you say that you were employed by Madame James. Has that been since the death of your daughter or was it prior to that? A. I was prior to that a dressmaker.

Q. Where? A. With Messieur James.

Q. Were you employed there prior to July, 1898? A. And I also worked with Mrs. James after the accident.

Q. Did you also learn the dressmaking craft

6212 prior to the time that you came to America? A. Oh, certainly; I am sixty-eight years old and of course I learned it very young.

Q. Did Madame Cicot keep herself stylishly appareled? A. Very stylishly.

Q. And she had and used to wear nice clothes? A. All the time.

Q. Was that more or less necessary in her business? A. Yes, certainly.

Q. You have stated that you made a demand on the Company the day after the accident. Did you mean the day after the accident itself or the day after you heard of the accident? A. I went the day
6213 after I heard that the accident occurred, and then I even went once more there.

Q. Is it a fact that this claim that you signed and that has been admitted here was prepared by your lawyers, and submitted to you for your perusal, and then were you asked to swear to it? A. Yes, sir.

Q. Is it founded upon statements which you made to your attorneys? A. Yes.

CROSS-EXAMINATION BY MR. KOPF:

Q. Did you make a list or lists of the articles which you say your daughter lost and hand it to
6214 your attorneys at any time? A. No, I do not think I did; I can't recall whether I did or not.

Q. There was present here the other day a list which you referred to. Where is that list? A. It was a memorandum that I made up myself.

Q. Where is that memorandum?

The Interpreter: I have it (producing paper).

Mr. Kopf asks for the production of the memorandum or list of articles which he saw in the Court room at the examination the other day.

The Commissioner: Does he say that is the pa-

per she testified from the other day; or was there another paper? 6215

The Witness: No, I only had this one.

Mr. Murray: I produce the paper. This is the only list we have ever had, and it is the only list that was here the other day, and the only list I have ever had.

Mr. Kopf: The paper I saw had the figures on the right hand side.

Mr. Murray: I have never seen any such paper. I have a copy of this one, if you want that, in my own handwriting.

Q. (By Mr. Kopf) Is that the only memorandum you ever made, Madame? A. Yes; I did not make any other paper besides this. I did not even make this one myself; I made it in French and some one wrote it in English for me. 6216

Q. Didn't you have the other day a paper of this color with items running down one half the page, with the figures on this side of the page (indicating the right of the margin)? A. No, I only had this paper.

Mr. Murray: I ask to have this paper marked for identification.

Marked for identification Exhibit 1 of this date. 6217

Recess taken until 1.30 P. M.

6218 AFTER RECESS.

Examination resumed:

ALICE BOLGER, being duly sworn, on behalf of the claimant, testified as follows:

EXAMINATION BY MR. MURRAY:

Q. What is your name and where do you live? A. Alice Bolger, 385 Park avenue.

Q. What is your business? A. Dressmaker.

Q. How long have you been engaged in the business of dressmaking? A. From the beginning?

6219 Q. Yes, how long have you been in it, in any capacity? A. About 15 years.

Q. Where were you employed if any in June and July, 1898? A. Madame Cicot's.

Q. In what capacity? A. Forewoman.

Q. In her business as dressmaking establishment? A. Yes, sir.

Q. Under what name did she conduct her business? A. Madame Juliet Cicot.

Q. Were you familiar with the affairs, personal affairs, and business affairs of Madame Cicot? A. Yes, I was quite familiar with everything pertaining to her business.

6220 Q. Where did you live then? A. I had two different addresses; at the time I was with Madame Cicot I was in One Hundred and Fourteenth street, 85 East One Hundred and Fourteenth street.

Q. But did you spend most of your time there? A. I spent most of my time with Madame Cicot, every working day of the year.

Q. Did you go home every night? A. Yes, sir.

Q. Did you accompany Madame Cicot to the steamer *La Bourgogne*? A. Yes.

Q. Did you see her after she went on the steamer? 6221
A. I was on the steamer with Madame Cicot.

Q. Did you see her on the steamer after the steamer had sailed from the dock? A. Yes, sir.

Q. Do you know that she left New York on that steamer? A. I know positively, sir, that she left New York on that steamer.

Q. Do you know how many trunks she took with her? A. She took two trunks and a satchel.

Q. Have you any idea of the contents of the trunks and the valise? A. I knew the valise contained money and papers, letters, and her trunks contained all her clothes.

Q. Have you any idea what clothes she had in 6222
her trunks? A. Yes; I made her a number of dresses before she went away.

Q. Well, just state what dresses that you know she had in her trunk? A. Well, I know she had a handsome black ladies' cloth gown, tailor made, black and lined with satin.

Q. What was that worth, if you know? A. Surely $110.

Q. Go on? A. It was silk lined. She had a black gown embroidered in silk spangles and emeralds.

Q. What was that made of? A. That was ladies' cloth also. 6223

Q. What was that worth? A. Worth about $95.

Q. Any others that you can think of? A. There was a black and tan batiste, lined with silk, also, and trimmed with lace.

Q. What do you think that was worth? A. It was worth surely about $80 or $85, because I made it and know the value of it.

Q. Is that the dress Mrs. Henuy testified as being worth $68? A. Yes; Madame Henuy did not know the color; it was a French batiste, lined with silk.

Q. And these figures or values that you are giv-

6224 ing, do you know that they are about what they are worth? A. About what they were worth, yes.

Q. From your knowledge of the value of the materials and the work that were put on them? A. Yes.

Q. How many employees did Madame Cicot have, do you remember? A. Well, they averaged from 12 to 15.

Q. And she paid them all wages? A. Yes.

Q. And these clothes were made in this establishment? A. Yes.

Q. Now, any other clothes you can think of? A. Well, Madame Cicot, the day she sailed, wore a
6225 black taffeta waist, embroidered in peacock feathers. I made the waist and it had real lace on it, and it was worth about $45 alone. Then she had a lavender batiste gown, lined with white silk also.

Q. Is that the one Mrs. Henuy testified to as being called violet? A. Violet, yes.

Q. What do you think that was worth? A. That was worth about $80; it was imported material and it was expensive.

Q. Were those clothes, except those you mentioned that she wore, all in the trunks? A. All in the trunks; I saw them packed; and saw the trunks taken away.

6226 Q. Did you see them at the dock? A. I saw the trunks go on the steamer; I was down there with Madame Cicot.

Q. Were there any other dresses of value that she had, that you collect? A. Yes, there was a foulard, a black fancy gown; a black suit worth about $45. She had two linen dresses; two tea gowns.

Q. What were they worth each, the two linen dresses? A. The linen dresses were worth about $35.

Q. Each? A. Each, about $70 for the two. 6227
They were trimmed with lace.

Q. Now the tea gowns? A. The tea gowns, one was worth about $50, imported materials, and the other was worth about $40 or $45.

Q. Now, were you familiar with the underclothes that she had, the linen? A. Yes, she showed them to me as she bought them, and they came from the store; she opened them for me to see them.

Q. Do you understand they were new, just purchased? A. All perfectly new; just came from the shop.

Q. Will you designate about what they were, please, and value them? A. She had a dozen 6228
chemises——

Q. Corsets and covers? A. Yes, and nightgowns; half a dozen nightgowns.

Q. What do you think was the worth of all the linen she had in the trunk? A. Well, I think the chemises were worth about $2 a piece, they were very fine.

Q. Was she a well-dressed woman? A. A well-dressed woman; always dressed well in underclothes and outside clothing.

Q. Now, cannot you state about what you think all the linen underwear and things of that kind that she had were worth, putting an outside figure 6229
upon them? A. Well, they must be worth $50 or $60 surely.

Q. All told? A. All told, except——

Q. Go right on. I ask you about all she had; all the linen underwear and underclothes she had? A. They were worth more than that; all told must have been $80 or $100 for just the underwear alone.

Q. Do you know what jewelry, if any, she had with her? A. Yes. At the time she sailed she wore a watch and chain worth about $145.

Objected to that she has not qualified as an expert.

6230 The Commissioner: No, strike out the value. Just specify the articles.

A. She had a gold watch and chain and a pair of diamond earrings.

Q. How big were the diamonds; do you know in carats about what they were? A. No, not exactly.

Q. Any rings or toilet articles? A. She wore a diamond ring that had five diamonds.

Q. You don't know the size of those diamonds? A. No, nice sized diamonds.

Q. Any other rings that you remember? A. A ring with three pearls and a diamond, a wedding ring, and a ring with one pearl.

6231 Q. You say that she had them on? A. She wore them; she had them on.

Q. Were you present at the time any of this jewelry was bought? A. I know Madame Cicot's watch and chain was worth $145, because she told me so.

Objected to.

The Commissioner: I will take it on the record.

Q. Was it new? A. It was a new watch and chain.

Q. Did she purchase it? She bought it that spring before she sailed.

6232 Q. Do you know where it was bought? A. No, I don't know where it was purchased.

Q. Do you know what money, if any, she had with her? A. Well, I was at Madame Cicot's house, on Lexington avenue, three days before she sailed, and she told me then she had $1,600; she told me it was all due from the waist room that she had it; that was the waist department.

Objected to. Objection overruled. Exception.

Q. What was the difference in this waist room 6233
and the other room? A. They are separate rooms, of course.

Q. And she had $1,600 that were profits from the waist room alone? A. Well, she said that she thanked the waist room mostly for it.

Q. Do you know that Madame Cicot had $1,600 with her three days before? A. Yes.

Q. Do you know that she still had that money when she went upon the *Bourgogne?* A. Well, of course, I am not sure of that.

Q. What was in the valise that you spoke of, do you know? A. There was the Madame's money that she had made, and papers; letters. 6234

Q. You don't know how much money was in it? A. I don't know how much money.

Q. She didn't tell you anything about owing a bill to Lord & Taylor? A. She didn't tell me; of course I didn't have time to wait to listen.

Q. What I want to know is, did she say, or how did you know she had any money in that valise when she went upon the *Bourgogne?* A. Well, that I don't know, Mr. Murray; only what Madame Cicot told me; I know she was very careful of her valise.

Mr. Kopf: I move to strike out all the statements of Madam Cicot. 6235

The Commissioner: She has not made any statement yet; I let it stand.

Q. Do you know what she did with the valise when she got it on the steamer? A. Yes.

Q. What? A. She went downstairs to her berth and left her valise in care of this Madame Menard.

Q. Who was she? A. She was the stewardess.

Q. Did you see her? A. Yes, I saw her and knew her.

6236 Q. Have you ever heard from Madam Cicot since this? A. No, not since then.

Q. Never have known of any of these effects that she had being returned? A. No.

Q. What have you done since the death of Madame Cicot? A. Do you mean for a living?

Q. Yes? A. I have been dressmaking for myself.

Q. Have you continued the business with a good many of the same customers that Madame Cicot had? A. Yes, sir.

Q. And are you familiar with the customers? A. Yes, sir.

Q. Both prior to that time and since? A. Yes,
6237 sir.

Q. You know the value of the goods used in dressmaking? A. Yes, sir.

Q. You have purchased goods? A. Yes.

CROSS-EXAMINATION BY MR. KOPF:

Q. What were your duties while you were employed there? A. Cutting linings, supplying the girls with work, trimming waists, sometimes obliged to go into the parlor and fit.

Q. Your duties then were solely confined to the working of the establishment? A. Yes.

Q. You did not receive any of the customers, did
6288 you? A. Just let them in the parlor some times and once in a while fit them; some of them.

Q. You didn't take any orders from them and fix prices, did you? A. No.

Q. That was no part of your work, then? A. No, not at that time.

Q. Did you ever buy any of the goods? A. For Madame Cicot?

Q. Yes? A. Yes.

Q. By sample? A. By sample; by taking a sample, and sometimes by selecting them.

Q. How many yards of ladies' cloth was in the 6239
$110 dress? A. Well, eight to nine yards.

Q. How tall was Madame Cicot? A. I don't know; she was taller than I.

Q. (By Mr. Murray.) How tall are you? A. About five feet five, I guess.

Q. (By Mr. Kopf.) Do you know what was paid for this material by the yard? A. Well, it was an expensive material; it was about four or five dollars a yard.

Mr. Kopf: I move to strike out the last answer as not responsive.

Motion granted. 6240

Q. Now, do you know what was paid for this material in the ladies' cloth dress? A. I know from the quality of the material it was four or five dollars a yard.

Q. Do you know what was paid for it? A. No.

Q. Do you know what was paid for the trimming? A. No, only the linings.

Q. What was paid for the linings? A. The coat was lined with satin that was $1.50 a yard, and then the taffeta lining was $1 a yard.

Q. Wouldn't it be necessary before you could estimate the value of a gown, to know what the material cost? A. Well, not exactly; always judge 6241
from the quality of the material put in the gown just about what it will be.

Q. You don't mean to say that you make dresses that way to-day; that you give an estimate on a dress in that way? A. I do; someone comes in and asks me the price of a gown. I give them an estimate on what I think I will get the material for. I know what kind of material I want to use, and make my estimate from that.

Q. Then you know in advance what the material is going to cost you, don't you? A. Yes, sir.

6242 Q. Now, isn't it a fact that these estimates are simply guess work? A. Well, more or less. Sometimes there is a few dollars more and sometimes a few dollars less, but nearly always it is about right.

Q. The estimates I refer to are the estimates that you have given of the dresses that you say Madame Cicot had? A. Yes, sir.

Q. Were they or not based upon guess work? A. No, I know the prices of materials; I know the prices of taffeta, the prices of laces, so that I always know the price of the gown.

Q. I asked you what the price of the lady's cloth
6243 was and you said you did not know? A. I said between four and five dollars It did not cost less than four dollars a yard.

Q. Now, how about the trimmings; what price would you make for that? A. On this gown I am speaking of?

Q. Yes? A. It was trimmed with the cloth itself. It was tailor made, lined with satin and silk; the gown with satin and the dress with silk.

Q. What was paid for the silk? A. $1 a yard for the silk and $1.50 a yard for the satin.

Q. Now, do you know what was paid for the materials in any of these dresses? A. No, I don't
6244 know what was paid for them.

Q. How was it that you come to agree with Mrs. Henuy on the price of the $110 dress and the $95 dress? A. Well, I know that at the time of making Madame Henuy was there and she saw them.

Mr. Murray: I object to that question because the witness has stated she was in the room and heard the testimony and she has said it was worth at least that.

Objection overruled.

Q. What kind of linen were in the linen dresses 6245
that you have described? A. They were regular linen, linen duck.

Q. Do you know where the underclothes were purchased? A. No, I can't recall now; I knew at the time.

Q. When did you first know that you were going to be asked to testify as to the value of these clothes? A. Well, of course I didn't know the case was going to be called up. I knew the value of the clothes; I have recollected everything.

Q. I am asking you now when you first knew you were going to testify as to these clothes? A Tuesday morning I got the notice. 6246

Q. Were you shown a list of the things? A. I had a list myself.

Q. You have a list? A. I had a list myself, I knew what was made.

Q. Where is it now? A. I have not got it now.

Q. Who has it? A. I believe it is somewhere in my desk at home.

Q. When did you make that list? A. I think it was Tuesday evening.

Q. Without the aid of anyone? A. Without the aid of anyone. I knew exactly what Madame Cicot had.

Q. Do you mean to say that a list of these articles 6247
was not sent to you? A. No; why should there be when I remember everything.

Q. I don't agree with you about remembering everything, because you were asked what underclothes Madame Cicot had. You got as far as twelve chemises and six nightgowns? A. There were other articles that I know of, which Madame Cicot had, which her mother does not remember.

Q. When did you first meet Mr. Murray? A. I don't know how long it is ago; not exactly.

6248 Q. Was it a year ago? A. I think it was more than a year ago, but I don't remember exactly.

Q. Haven't you talked about the testimony you were going to give to Madame Henuy? A. I saw Madame Henuy this morning for the first time in I don't know how long, one or two years. I met her this morning for the first time in that length of time.

Q. How long did it take you to make this list which you say you have in your desk? A. I guess a couple of hours to think it all out. I was figuring it over with a young lady that worked in the skirt room; we both knew exactly.

6249 Q. What is her name? A. Her name is O'Connell.

Q. Where does she lie? A. She lives in Eighty-eighth street.

Q. Do you know the number? A. Yes, it is 54 East Eighty-eighth street.

Q. Did you see Madame Cico put any money in her valise? A. No, I did not see her put it in the valise.

Q. How did you know it was in there? A. As I said before, it was easy to know she had the money in, she was so careful of it.

Q. That is the only reason then that you can give
6250 for knowing that the money was in there. When did she pack her trunks? A. The trunks were partly packed before she left Fourth avenue, and she finished the packing on Lexington avenue.

Q. What was the number of the place on Lexington avenue. A. 174.

Q. What was the number of the place on Fourth avenue? A. That I can't remember now, but I have it.

Q. How long were you employed there? A. Since Madame Cicot has been in business.

Q. How many years is that? A. Two years.

Q. Now, I want you to tell me with some particu- 6251
larity what underwear Madame Cicot had with her? A. Well, I know that she had two silk petticoats made in the workroom, and four white embroidered skirts, a dozen chemises; there were half a dozen nightgowns and a half a dozen pairs drawers, there was a dozen pair of stockings, some silk and some cashmere.

Q. Were they all new? A. They were all new; all bought new.

Q. But you can't mention the name of a single store at which these things were bought? A. I know they were most of them bought in one particular shop. 6252

Q. What is the name of it? A. I have forgotten; Madame told me at the time, but I have forgotten.

Q. Did all these things, all these underclothes that you say came from one shop, come at one time? A. No, she went down two different days to buy them.

Q. Now, who took charge of the business after Madame Cicot left for Europe? A. Well, a great many of Madame Cicot's customers came to me.

Q. I mean now before the disaster? A. You mean to attend to Madame Cicot's affairs?

Q. Yes? A. I suppose her mother had that in hand. 6253

Q. I refer to who had charge of her business during Madame Cicot's absence? A. You mean while she was in Europe previously?

Q. No, when she left, who did she leave her business in charge of? A. Her mother, of course.

Q. Were you in charge as forewoman? A. Of course the business stopped then to be started again in the latter part of September or beginning of October.

Q. Who kept the books there; you? A. No, Madame Cicot kept them.

6254 Q. Who kept the workroom books? A. I kept the girls' time; Madame Cicot kept a book also of the girls' time.

Q. What became of the workroom book? A. I don't know, sir; Madame Cicot kept some of her books with her, the house being upset.

Q. How do you know that? A. I know, because I saw her put them in her trunk; I was there when it was done.

Q. How many books? A. I don't know just exactly how many.

Q. More than one? A. Oh, yes.

Q. What books were they? A. I suppose the
6255 books about money matters; there was the book of the girls' time; the address book; addresses of all her customers.

REDIRECT-EXAMINATION BY MR. MURRAY:

Q. You say the three years that Madame Cicot had been in business, that was since she had been in business by herself? A. Yes, sir.

Q. Do you know whether she was engaged in business prior to that time in partnership or otherwise? A. Before I went to Madame Cicot, she was with Madame James.

Q. Now, you spoke of the business having stopped
6256 when she went abroad in 1898? A. Yes, sir.

Q. Do you mean that that particular business stopped, or that the season of business was over? A. The season of business was over, and they commence again in the fall.

Q. Now, as a matter of fact, you first became acquainted with me just subsequent to this accident, didn't you? A. Yes.

Q. And do you recollect having come to my office for the purpose of giving me what information you knew about the effects of Madame Cicot about a

year or two ago? A. Yes; I think it was about a 6257
year or something like that.

Q. Did you get a letter from me the other day, within a week, asking you to come down and testify in this case? A. Yes.

Q. Did you receive a subpœna? A. Yes, sir.

Q. Do you know whether Mrs. Cicot had any commissions to execute abroad?

Objected to. Objection overruled. Exception.

A. Yes, sir.

Q. Do you remember what they were? A. Yes, she had four different wedding trousseaux to go 6258
over.

Q. Do you know whether she got any money to execute those with? A. No, that I do not know.

Q. Do you know whether she took any goods with her; or clothes of any kind that belonged to other people? A. Yes, she had some corset covers.

Q. Who were they for? A. For Mrs. Vatable.

Q. Do you know what they were worth? A. They were worth $15 apiece.

Q. Lace, were they? A. Very fine batiste and lace.

Q. It has been testified to that she took some 12 yards of cloth with her for the purpose of being 6259
embroidered; do you know anything about that? A. Yes, I know she was supposed to get it and have it embroidered there.

Q. Do you know whether she did have it with her actually? A. Yes, she had it with her.

Q. Did you see it in her trunk? A. I saw it put in the trunk on Fourth avenue.

Q. The same trunk she took with her on board the vessel? A. Yes, sir.

Q. That you saw go on the vessel? A. Yes, sir.

6260 RECROSS-EXAMINATION BY MR. KOPF:

Q. What was the name of the people for whom these trousseaux were ordered? A. Well, Miss Godfrey was one, and there was a new customer who was from Lenox; I can't remember the name, and there was a Miss Curtain, and I don't remember the other name. I know there were four different wedding trousseaux she had orders for.

Q. Do you know whether Madame Cicot had any charge accounts in Paris? A. Yes, I know she had.

Q. (By Mr. Murray) What do you mean by charge account, in Paris? A. Small charges in the
6261 stores; very small ones.

Q. (By Mr. Kopf) How high and how small? A. Well, I don't know; I know they amounted to very little.

[CLAIMANT RESTS.]

It is understood that if Mr. Jones desires to put in any evidence on this claim, he will do so upon notice.

Counsel for the claimant reserves the right to put in rebuttal.

6262

Exhibit A. T. A.

6263

AUGUST 4th, 1898.

TO WHOM IT MAY CONCERN:

This is to certify that Juliette Cicot purchased a passage ticket from this Company for our steamer *La Bourgogne* which sailed from here on July 2nd, 1898, and which foundered at sea after a collision on the morning of July 4th. The name of Juliette Cicot appears on the passenger list of said steamer and was not found amongst those who were saved.

6264

COMPAGNIE GENERALE TRANSATLANTIQUE.

FAGUET,

Acting General Agent for U. S. and Canada.

Exhibit C. T. A.

	14	Fernne	120	
	4	Gillen.	142	
	—	Verren	55	
	56	Cook	110	
Alice	56	Cook.	275	
Diana	36	Hyde.	159	6265
	240	Godf	181	
	—	Gol	143	
	332	Neeser	215	
		Neeser	160	
		Broug.	243	
		Grevy	180	
		Bullg.	050	
		Bradley	120	
		Gar	178	
		Alexandre	090	
			24.26	

6266 **Exhibit A.**

At a Surrogate's Court, held in and for the County of New York, at the Surrogate's Office in the City of New York, on the 21st day of February, in the year one thousand nine hundred.

Present—Hon. FRANK T. FITZGERALD, Surrogate.

IN THE MATTER

6267

OF

The judicial settlement of the account of PAULINE HENUY, Administratrix of the goods and chattels and credits of Juliette Cicot,

Deceased.

PAULINE HENUY, Administratrix of the goods, chattels and credits of Juliette Cicot, late of the City of New York, deceased, having heretofore
6268 made appication to the Surrogate of the City and County of New York, for a judicial settlement of her account as such Administratrix, and a citation having been thereupon issued, pursuant to statute, directed to all persons interested in the estate of said deceased, citing and requiring them and each of them personally to be and appear before the said Surrogate, at his office in the City of New York, on the 31st day of October, 1899, last past, at 10.30 o'clock in the forenoon of that day, then and there to attend such judicial settlement, and the said

citation having been returned with proof of the 6269
due service thereof on Amond L. Cicot, husband of the deceased; National Surety Company, surety of the bond of the Administratrix, petitioner herein; Edward P. Hatch, Charles Brandt, Pauline Chas, Lillian Stokes Gillespie, Charles H. Godfrey and Mrs. William W. Hoppin, creditors, and the said Administratrix having appeared on the return day of said citation and the said Administratrix having rendered an account under oath, before the said Surrogate; and the said account having been filed, together with the vouchers in support thereof, and Edward P. Hatch, above-mentioned creditor having appeared by Robert McC. Robinson, his attor- 6270
ney, and made objections to said account, which said objections were duly filed on the 6th day of November, 1899, and duly withdrawn on the 15th day of February, 1900, by order of the Surrogate, and no one else having appeared, and the same matter having been duly adjourned to this day, the said Surrogate, after having examined the said account and vouchers, now here finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, made by the said Surrogate as judicially settled and adjusted by him to be recorded with and taken to be a part of the decree in this matter, to wit: 6271

A summary statement of the account of Pauline Henny, Administratrix of the goods, chattels and credits of Juliette Cicot, deceased, made by the Surrogate as judicially settled and allowed.

The said Administratrix is charged as follows:
To amount of assets of estate as appears by

Schedule A of the said account.....$315.36

The said administratrix is credited as follows:
With amount of expenditures as appears by

Schedule B of the said account.....$229.10
Leaving a cash balance in her hands of.... 86.26

6272 And it appearing that the said Administratrix has fully accounted for all the moneys and property of the estate of said deceased, which have come into her hands as such Administratrix, and her account having been adjusted by the said Surrogate, and a summary statement of the same having been made as above and herewith recorded, it is hereby ordered, adjudged and decreed, that the said account be and the same is hereby judicially settled and allowed as filed and adjusted.

And it is further ordered, adjudged and decreed, that out of the balance so found, as above, remaining in the hands of the said Administratrix she re-
6273 tain the sum of eleven dollars and 26 cents ($11.26) for her costs, counsel fee and disbursements on this accounting.

It is further ordered, adjudged and decreed, that the balance of $75.00 be paid to Edw. P. Hatch, a preferred creditor by virtue of a judgment for $346.21 duly obtained and entered, against Juliette Cicot, petitioner's intestate, in the City Court of the City of New York on the 15th day of March, 1894, and remaining unsatisfied of record therein, duly proved and a valid claim against the within estate, said payment being on account of said claim.

6274 It is further ordered, adjudged and decreed, that the proceedings of the said Administratrix, petitioner herein, are hereby approved.

Upon complying with all and every the foregoing directions of this decree, it is further

Ordered, adjudged and decreed, that the said Pauline Lenuy be and is hereby discharged as Administratrix of the goods, chattels and credits of

Juliette Cicot, deceased, as to all matters embraced in this accounting. 6275

FRANK T. FITZGERALD,
Surrogate.

Original filed February 21, 1900.
A true copy.
[SEAL.] J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

(Endorsed)—Cert. Copy Decree on Final Accounting.—Exhibit A, July 2, 1903.—T. A.

6276

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability. 6277

SIRS:

Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by John Perry as next of kin of Katherine Perry and Albert Perry, deceased, and prays that the same may be disallowed and excluded unless established by fur-

6278 ther legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated, New York April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
A. GORDON MURRAY, Esq.,
Proctor for Claimant.

(Endorsed)—Notice of objection to claim of John Perry, as next of kin of Katherine and Albert
6279 Perry.—Filed Apr. 23, 1902.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

6280 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

SIRS:

Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by W. C.

Perry, as Administrator of Kate M. Perry, de- 6281
ceased, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated, New York April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
A. GORDON MURRAY, Esq.,
Proctor for Claimant.

6282

(Endorsed)—Notice of objection to claim of W. C. Perry as Admr. of Kate M. Perry, dec'd.—Filed Apr. 23, 1902.

6283

6284 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation
6285 of liability.

SIRS:-

Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this clause by W. C. Perry, as Administrator of Florence Perry, deceased, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated, New York April 19th, 1902.

6286 EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
A. GORDON MURRAY, Esq.,
Proctor for Claimant.

(Endorsed)—Notice of objection to claim of W. C. Perry, as Admr. of Florence Perry, dec'd.—Filed April 23, 1902.

UNITED STATES DISTRICT COURT, 6287

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability. 6288

SIRS:

Please take notice that the petitioner above named hereby objects to the allowance of the claim filed with the Commissioner in this cause by W. C. Perry, as Administrator of Sadie Perry, deceased, and prays that the same may be disallowed and excluded unless established by further legal *prima facie* proof on notice to the proctor for the petitioner, as in ordinary cases.

Dated, New York, April 19th, 1902. 6289

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
A. GORDON MURRAY, Esq.,
Proctor for Claimant.

(Endorsed)—Notice of objection to claim of W. C. Perry as Admr. of Sadie Perry.—Filed Apr. 23, 1902.

6290 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before THOMAS ALEXANDER, Esq.,
U. S. Commissioner.

IN THE MATTER

OF

6291 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability as owner of the steamship "LA BOURGOGNE."

Proceedings under order of March 22nd, 1902, to prove claims.

NEW YORK, April 30, 1902.

Present—THE COMMISSIONER,

MR. A. GORDON MURRAY, for the Claimants W. C. Perry, as administrator for the estates of Sadie Perry,
6292 Florence Perry, Sallie M. Perry, and for John Perry, father and next of kin of the minors Catherine and Albert Perry;

MR. EDWARD K. JONES, by Mr. Kopf, for the Petitioners.

Mr. Murray produces notice of reference with admission of service.

Adjourned to May 5, 1902, at 2.30 P. M.

6293

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability as owner of the steamship "LA BOURGOGNE."

NEW YORK, May 5, 1902.

6294

Met pursuant to adjournment.

Present—THE COMMISSIONER and Counsel as before.

Mr. Murray offers in evidence deposition of John Perry, taken *de bene esse* before Thomas Alexander, United States Commissioner, on the 14th of December, 1900, and duly filed in the Court December 24, 1900.

Marked Exhibit "A."

Mr. Murray also offers in evidence the deposition of William C. Perry, taken *de bene esse* before Henry C. Page, Notary Public for Jackson County, Missouri, on the 15th day of February, 1901, and the like deposition of Sallie M. Perry, taken at the same time and place, annexed to which are the letters of administration, duly granted, by the Probate Court of Jackson County, Missouri, together with notice of taking.

6295

Marked Exhibit "B."

Petitioners' counsel reserves the right to put in proof in behalf of the petitioner until all of the

6296 claimants have put in their direct proof, and also reserves the right to object to the proofs now offered, such proofs or objections, should he desire to offer any, to be made upon four days' notice to the other side.

Mr. Murray closes his proofs.

Hearing adjourned without date.

UNITED STATES DISTRICT COURT,

6297

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for a limitation of liability and other relief.

6298

Deposition of JOHN PERRY, taken pursuant to notice before Thomas Alexander, United States Commissioner, at his office in the Post Office Building, New York City, on the 14th day of December, 1900.

It is stipulated that the deposition may be taken by a stenographer, whose fees shall be taxable as disbursements in the proceeding, signing, filing

and certification waived, a copy to be served on 6299
proctors for the petitioner.

APPEARANCES:

Messrs. JONES & GOVIN (Mr. Edward K. Jones and Mr. Frederick Kopf) for Petitioner.
A. GORDON MURRAY, Esq., and G. W. BETTS, Jr., Esq., for Claimants John Perry and W. C. Perry, as Administrators.

DIRECT-EXAMINATION BY MR. MURRAY:

Q. Please state your name? A. John Perry.
Q. And address? A. Kansas City, Missouri. 6300
Q. Are you bound on a voyage to sea? A. I am.
Q. When do you sail? A. To-morrow.

Mr. Jones: You need not prove that.

Q. Are you a citizen of the United States? A. Yes.
Q. Do you know respectively Kate M. Perry, Sadie Perry, Florence Perry, Albert Perry and Katherine Perry? A. I did.
Q. Who was Kate M. Perry? A. My wife.
Q. Who was Sadie Perry and Florence Perry? A. My children.
Q. How old were they, Mr. Perry? A. They 6301
were over twenty-one.
Q. Who were Albert Perry and Katherine Perry? A. My children.
Q. How old were they? A. Albert was twelve and Katherine was seven.
Q. Did Kate M. Perry have any property of her own? A. Yes.
Q. And did Sadie Perry and Florence Perry have property of their own? A. They did.
Q. Did Albert Perry and Katherine Perry, the

6302 infants, have any property of their own? A. No, I don't know that they did; they were children.

Q. Who purchased the personal property of the infants Katherine and Albert, who paid for it? A. Their mother purchased for it and I paid for it.

Q. So that it belonged to you? A. Yes.

Q. Do you know whether or not those said five persons, Kate M. Perry, Florence Perry, Sadie Perry, Albert Perry and Katherine Perry sailed on the steamship *La Bourgogne* on her last trip from New York bound for Havre, July 2, 1898? A. Yes, I know they did.

Q. Where and when did you last see them, Mr.
6303 Perry? A. At the pier of the Steamship Company.

Q. Did you see them go on the steamer? A. Yes.

Q. What date was that? A. It was on the Saturday, on the regular sailing day, I think it must have been July the 2nd.

Q. Did you or not purchase the tickets for their transportation that day on that trip? A. I don't think I purchased them that day, probably the day before; I purchased them, however.

Q. You purchased them and got the ticket the day before? A. Yes, sir.

Q. From whom did you purchase that ticket? A. From Cook's Agency.

6304 Q. In New York? A. In New York.

Q. Cook is an agent of the company? A. Well, I presume so; I don't know.

Q. Held themselves out to be? A. Yes.

Mr. Jones: I object to that as calling for a conclusion of the witness.

Q. When did you give the tickets to the party or how many tickets were there? A. I think there was one ticket for all of them.

Q. How much did you pay for that ticket, the transportation of the party? A. Well, I don't re-

member the exact amount, but it was something 6305
over $500.

Q. $522.50?

Mr. Jones: I object to the question as leading.

A. I said it was over $500, I don't know the exact amount.

Q. Did you hand that ticket to one of the party? A. I gave it to my wife.

Q. She had it when she went aboard of the steamer?

Mr. Jones: I object to that as leading.

A. Yes.

Q. Did she or not have it when she went upon 6306
the steamer?

Mr. Jones: I object to that as leading.

A. She did.

Q. Was there any printing on the ticket? A. Yes, there was some printing on it.

Mr. Jones: I object to that as secondary evidence.

Mr. Murray: Mr. Jones, will you furnish us with a copy of the ticket.

Mr. Jones: I will not while this witness is on the stand.

6307

The counsel for the claimant calls upon the counsel for the petitioner for the production of the ticket or a copy thereof.

The counsel for the petitioner states that he is absolutely unable to produce the ticket, especially in view of the statement of the witness that he gave it to his wife who embarked on the steamer, and the claim is that the decedents were lost.

Mr. Murray: How about the copy, haven't you got a copy of it, won't you produce the ticket?

Mr. Jones: I have nothing to say about that.

6308 Mr. Murray: Counsel for petitioner refuses to produce a copy of the ticket.

Q. Was that ticket which you purchased, Mr. Perry, printed in French or in English? A. My recollection is it was in French, although I don't know positively; I paid very little attention to it except to see that it was the ticket for that boat.

Q. Please state what stipulations it contained? A. I don't know that it contained any.

Q. Did you have your attention called to any stipulations in the ticket at the time of purchasing it? A. No.

Q. Or after purchasing it? A. No.

6309 Q. Did you ever at any time have your attention called to any stipulations or any contract or agreement or proposed agreement with the Company, limiting the liability of the Company for the transportation of this party, limiting the liability of the Company to any amount for anything?

Objected to by petitioner's counsel as leading, and as secondary evidence of a written instrument not produced and proved in evidence.

A. No, I did not.

Q. Do you read French, Mr. Perry? A. No.

Q. Do you know what baggage and property
6310 each of these particular persons had with them?

Mr. Jones: Now, Mr. Perry, stop and think of the nature of the question, do you know of your own knowledge by examination, that is the meaning of the question.

Q. Answer my question, please, Mr. Perry? A. I will have to answer that question with a sort of qualification. If you mean do I know each particular piece of baggage and its contents that they had, I do not; I know in a general way what they had.

Q. How many pieces of baggage did they have? 6311
A. How many trunks and bags, and everything?

Q. Yes? A. Well, they had either thirteen or fourteen.

Q. How many of those were trunks? A. Either five or six.

Q. The balance of them bags and traveling carryalls? A. Carryalls, and one of them called a Gladstone, a big leather thing, and then there were some small ones.

Q. Did Miss Florence Perry have her own trunk or trunks? A. Yes, Florence and Sadie, both had them, because they had been away and joined us here. 6312

Q. Do you know how many each of those two had? A. I don't think they had over one each.

Q. Then how many did Mrs. Perry have? A. Well, she had either three or four.

Q. Where were the infants; the children's effects? A. I don't know that they had a trunk at all, these little ones; their things were probably with the others; they may have had a trunk, but I don't know that they did.

Q. Did the two grown daughters have their separate traveling valises? A. Yes.

Q. What did they do with that baggage, what was done with that baggage? A. Why, it was taken 6313
on board the ship.

Q. Did you see it put on the ship? A. Yes.

Q. About twelve or thirteen pieces? A. Yes.

Q. How was it marked, or was it marked? A. Why, some of the trunks—I don't know that all of them did, but some of them had their names painted on them, and they were all tagged, or marked, as to whether they went in the hold or went in the stateroom, and the name of the ship.

Q. State whether or not you saw that baggage put

6314 on the steamship *La Bourgogne* July 2d, 1898? A. I did.

Q. Now, with regard to Mrs. Kate M. Perry, will you state what particular property Mrs. Perry had with her when she went on board, and sailed from New York? A. Why, she had nothing except her personal effects and her money, and such things as a lady usually carries.

Q. How much money had she, Mr. Perry? A. Well, she had somewhere between eight hundred and a thousand dollars, I can't remember.

Q. In currency, gold and silver? A. Yes, she had American currency and then she had English
6315 notes and French notes.

Q. How do you know she had it? A. Because I got it for her and gave it to her.

Q. Do you know what jewelry she had? A. Well, I know pretty well; I don't remember all that she had, but I remember some of it.

Q. Will you state what you remember? A. She had a watch.

Q. What was that worth, describe it if you can? A. Well, it was a French watch; or rather it was a Swiss watch which I bought in Paris.

Q. What was that worth? A. I paid 800 francs for it.

6316 Q. What was it worth at that time? A. I don't know, I am sure.

Q. $160? A. I guess so.

Q How long had she had it? A. Had it two years, may be three years.

Q. Was it in good condition? A. Yes, it was a jewelled watch.

Q. Then it was worth $160, that is 800 francs? A. Yes.

Q. What other jewelry did she have? A. Well, she had two solitaire diamond rings.

Q. What were those rings worth? A. They were

alike; I don't remember what they were worth; I 6317
paid $350 each for them.

Q. When? A. Well, eight or ten years ago, one of them, and five or six years ago the other.

Q. Solitaire diamonds? A. Yes.

Q. Any other rings? A. Yes, she had a smaller diamond ring.

Q. What was that worth? A. That probably was worth $125, and a wedding ring; I think that was all the rings she had.

Q. How much do you think that the trunk and traveling bags that Mrs. Perry had were worth, Mr. Perry, or what were they worth? A. The ones that she had individually? 6318

Q. Yes? A. I don't suppose they were worth over seventy-five or one hundred dollars. I understand you are speaking about the trunks themselves, without any contents?

Q. Yes, sir; the trunks themselves; were they worth as much as that? A. As what? $75?

Q. Yes, sir? A. Yes.

Q. Can you specify, Mr. Perry, what those trunks and traveling bags contained?

Mr. Jones: If you know?

The Witness: Mr. Jones, I don't expect to say anything I don't know; I haven't that reputation generally. 6319

Mr. Jones: I don't doubt it; I merely call your attention to the question.

The Witness: And I am not going to specify or particularize which pieces they had, because I don't know.

Q. Specify as much as you can? A. I can specify as much as I know. That is a province I have never invaded very much, women's apparel.

Q. Wearing apparel, and what those trunks and traveling valises contained? A. They contained

6320 everything which is necessary for a lady to have going traveling and going to be gone a very long time. The fact is, they had everything they had; that is, they took everything they had, I think there was nothing left behind; there was a full and complete wardrobe for all of them, consisting of dresses and linen and toilet articles.

Q. Silk dresses and satin dresses? A. Silk, party dresses, I know they had; they all had everything they wanted, and they were well supplied.

Q. What was it worth, do you think, in money; what was it worth in money? A. What do you mean, Mrs. Perry's?

6321 Q. Yes, just Mrs. Perry's? A. Oh, I should think everything she had outside the jewelry would be worth $2,000.

Q. Now, with regard to Miss Sadie Perry and Miss Florence Perry, how near of an age were they, Mr. Perry? A. They were twins.

Q. How long since they had been to school or college? A. They had just finished, graduated.

Q. Where? A. The Sacred Heart, Manhattanville.

Q. So far as Miss Sadie Perry was concerned, will you state what trunks and valises she had, if any? You stated that she did have? A. She had

6322 one trunk at least, and then a couple of bags, I suppose; I don't know exactly, but that is about it.

Q. What do you think they were worth, those trunks and valises themselves? A. Oh, $25, I should think or $30.

Q. What did they contain? A. Well, they contained dresses, a regular wardrobe of a young lady traveling. I know they had particularly some new dresses, because they had just finished school and their mother provided them very nicely with everything they wanted.

Q. What were those dresses and clothing worth? 6323
A. I should think $500.

Q. Did you know, Mr. Perry, in a general way, what your daughters' bills were and about what amount in money they were spending for clothing? A. Yes, I knew in a general way.

Q. Did Miss Sadie Perry have any jewelry with her? A. Yes.

Q. Will you specify what that was, Mr. Perry? A. She had a watch and chain.

Q. What was that worth? A. That was worth a hundred dollars.

Q. The watch and chain? A. No, the watch; the chain was probably worth $50. 6324

Q. What else? A. Then she had two diamond rings.

Q. What were they worth each? A. Well, one would be worth $150 and the other seventy-five, and then she had a pendant.

Q. A jewelled pendant? A. Yes.

Q. What was that worth? A. Oh, $150.

Q. Any other jewelry that you recollect? A. Well, she had some other little things, but I don't remember what they were.

Q. Cuff buttons and studs, and things of that kind? A. Yes.

Q. What were they worth, what would you say 6325
all told? A. Well, I don't know what they were worth; they didn't amount to very much.

Q. Did she have any money, Mr. Perry? A. Yes, she had about $50.

Q. With regard to Miss Florence Perry, will you state what trunks and traveling valises she had? A. Perhaps I can shorten this up by saying she had exactly what the other had; they were twins, and whatever one possessed the other had a duplicate of.

Q. Now, with regard to property of yours that the

6326 children Katherine and Albert had, will you state what that was? A. Well, it was just the usual wearing apparel that children have.

Q. State how much it was worth? A. Oh, I don't think it was worth over $350 for both of them.

Q. Have you heard from any one of that party since that day, Mr. Perry? A. I have not.

Q. Do you know what became of the *La Bourgogne*? A. Yes.

Q. Will you state what you know? A. Well, she sank about sixty miles off Sable Island.

Q. Did you make any inquiries at the office of the
6327 Company with regard to any of these people or any of this baggage? A. I did.

Q. What did you learn?

Mr. Jones: I object to that as secondary evidence.

Q. State what they told you?

Mr. Jones: I object to that as inadmissible and incompetent.

Q. State what they told you? A. Well, I made inquiries first from our agent here, and he couldn't get any information at all, and then I went myself.

Mr. Jones: I object to the question and answer,
6328 and move to strike it out on the ground that the witness has testified to hearsay and secondary evidence.

A. Then I came here myself and made inquiries, and the agent told me that there was no further hope.

Q. What agent? A. The agent of the Company whose office is down near the Battery. I then tried to get them to send a searching party out, which they declined to do, so Judge Dillon and myself sent one on our own account.

Q. What results did the party that you sent out 6329
have? A. Well, we didn't succeed in finding any of the bodies of our own people, but we did find quite a number of others.

Q. You didn't find any of the baggage or goods belonging to any of your party? A. No.

Q. Was any of this baggage or goods ever delivered? A. No.

Mr. Jones: What do you mean by "ever delivered"? The witness seems to know, but I don't. Ever delivered to him, or where?

Mr. Murray: The question will stand.

Mr. Jones: I ask you to define what you mean.

6330

Q. It was not delivered or returned to you? A. No.

Q. Or to any body whom you know or have any knowledge of? A. No, sir.

Mr. Jones: I object to the question as leading.

Q. Did any of these five people leave a will? A. They did not.

CROSS-EXAMINATION BY MR. JONES:

Q. Mr. Perry, what is your business? A. Coal business.

Q. Have you ever had any other occupation? A. 6331
Yes.

Q. What other occupation? A. Well, I am receiver of a bank, too, at the present time.

Q. Have you ever been connected with a railroad or in any railroad business? A. With a railway?

Q. Yes? A. No, sir; except as a shipper.

Q. You have traveled more or less extensively on railways, have you not? A. Yes, a good deal.

Q. Did you ever stop to read the conditions and limitations that are usually printed on railroad tickets? A. No, it was very rare that I had one.

6332 Q. Then, I presume, you traveled on a pass usually? A. Yes.

Q. In those instances where you did purchase a railroad ticket, did you notice any limitations?

Mr. Murray: I object to this line of examination as immaterial and irrelevant and incompetent.

Q. (Continuing.) Did you notice any limitation or disclaimer of liability on the part of the railroad company with regard to baggage?

Mr. Murray: Objected to as immaterial, irrelevant and incompetent.

6333 A. I don't remember any instance where I did, but I know what you are trying to get at, and I will tell you that I understand generally there is in some cases a limitation.

Q. What is that limitation?

Same objection.

A. I don't know.

Q. But you know, Mr. Perry, that on all the railways, nearly all the railways, in fact all that you have ever traveled on or purchased tickets of, the ticket contained a limitation of liability to $100 with regard to loss of baggage?

6334 Same objection.

A. I don't know that to be a fact.

Q. Do you know that they restrict their liability to any other amount? A. I know that it is generally understood, as I said before, that railroad companies do, at least some of them, have restrictions of some sort and some nature, but as to just exactly what it is I don't know anything about it.

Q. Have you traveled very much on steamships? A. Oh, a good deal.

Mr. Murray: Objected to as immaterial and 6335
irrelevant.

Q. Have you, on the occasion of purchasing tickets, and traveling by steamships, read the conditions and limitations of their liability printed on the tickets? A. I never read a ticket in my life.

Q. Then the terms of the contract never gave you any concern whatever?

Same objection.

A. No, sir.

Q. You never had any curiosity to know?

Same objection. 6336

A. Not the slightest; it wouldn't have done me any good if I had.

Q. Then I understand you to say that you never in any instance adverted to or examined these conditions and limitations that transportation companies print upon their contracts of transportation?

Same objection.

A. I never did to my knowledge; I never remember an instance that I did, although I do have a knowledge that that is the fact in many cases.

Q. That what is the fact in many cases?

Same objection. 6337

A. It prints a limitation.

Q. You say you purchased the ticket for your wife and children of Cook's Agency? A. Yes, sir.

Q. Do you remember the general appearance of the ticket? A. Well, it is only remembrance, Mr. Jones, but I think it was a sort of a pasteboard bigger than the railway ticket, some.

Q. Then I understand you didn't read it or examine any of the printed matter that was on the ticket? A. I couldn't tell you any word that was

6338 on it; I say I never read it, and I don't believe any other man that travels very much does.

Mr. Jones: I move to strike out the last portion of the witness's answer; he doesn't believe any other man examines a ticket.

Q. Did you notice whether the ticket was in English or French?

Mr. Murray: Objected to as having been answered.

A. I think it was partly in French, if I remember. You see, I had a good many tickets on that line. They always went that way, as a rule, and
6339 they were going over quite often, and I think some of it was in French and some of it was in English.

Q. But you don't know? A. I don't remember; that is my remembrance about it.

Q. Did you read the persons whose names were written on the ticket? A. Well, I probably did see that that was corect.

Q. You are going to Europe to-morrow, I believe? A. I expect to, yes. I have got a ticket and haven't read that either.

Q. You have a ticket and you haven't read that? A. No, not yet.

Q. Notwithstanding your experience in the case
6340 of the loss of the *La Bourgogne*?

Mr. Murray: I object to that.

Q. Now, Mr. Perry, what pieces of baggage went into the hold and what pieces of baggage went into the stateroom, if you know? A. I don't know. All I know is, I saw it go up the chute onto the deck.

Q. Don't you also know that it was arranged beforehand that certain pieces should go into these ladies' staterooms? A. I do.

Q. And other pieces go into the hold? A. I do.

Q. But you don't know now what distribution 6341
was made in that regard? A. I don't remember now.

Q. Do you know where the jewelry went? A. Well, they were wearing the jewelry.

Q. And Mrs. Perry and your children had their money in their possession also, did they not? A. I don't know what they had in the trunks or what they had on their person.

Q. You do not know as to that? A. I don't know as to that.

Q. Do you know if any checks were issued for the pieces of baggage? A. I do not.

Q. Did you go on board before the departure of 6342
the steamer? A. Yes.

Q. Do you know if your people made any deposit of their money and valuables with the purser? A. I don't know whether they did or not.

Q. You were seeing them off, were you not, and supervising their departure? A. Yes.

Q. And making arrangements for them? A. Yes.

Q. But you are not able to state whether any deposit of money or jewelry was made with the purser? A. No, I don't know whether they did or not; I never did such a thing.

Q. Who is W. C. Perry? A. My brother.

Q. Do you know of his having filed in the United 6343
States Circuit Court for the Northern District of Illinois a suit for the recovery of $5,400 in behalf of these ladies for whom you claim here.

Mr. Murray: Objected to as being improper evidence and not the best evidence.

A. I don't know what is done, he simply represents me in this matter, and I turned everything over to him; I have had nothing to do with it in any way until now.

6344 Q. You know nothing about what was done as to any litigation in Chicago? A. I don't know what steps were taken; I know he intended doing something, but what it was I don't know.

REDIRECT-EXAMINATION BY MR. MURRAY:

Q. You didn't receive any checks for he baggage delivered at that time, did you? A. No.

Q. Did Mrs. Perry have a letter of credit? A. Yes.

Q. Would you mind stating how much that was? A. The letter she had was $5,000.

6345 Mr. Jones: Do you mean to prove that as an item of damage?

Mr. Murray: No, sir; only as showing the station in life of the parties, was the purpose of it.

Q. They were first-class passengers, I believe, Mr. Perry, all of them? A. I got the best berth I could get.

The petitioner's counsel states that he does not consent to the taxation of costs of taking this deposition except out of any fund that may be in Court for distribution.

6346

UNITED STATES OF AMERICA, Southern District of New York, } ss.: 6347

I, THOMAS ALEXANDER, a commissioner duly appointed by the District Court of the United States, for the Southern District of New York,

Do hereby certify, that on the 14th day of December, in the year of our Lord one thousand nine hundred, I was attended by A. Gordon Murray and by G. W. Betts, Jr., proctors for the claimants, W. C. Perry as administrator, and John Perry and other claimants, and by Edward K. Jones and Frederick Kopf, proctors for the petitioner, and also by the witness, who was of sound mind and lawful age, 6348 and the witness being by me first carefully examined and cautioned, sworn to testify the truth, the whole truth, and nothing but the truth, the deposition was taken by a stenographer under a stipulation of the parties (which also waived signing of same by the witness) in the presence of the witness and from his statement.

I further certify, that the reason for taking the foregoing deposition is that the witness is material and necessary in the cause in the caption of the said deposition named, and that he resides at a greater distance than one hundred miles from the place of trial and is bound on a voyage to sea.

I further certify, that due notification of the time 6349 of taking the said deposition signed by the proctors for claimants was made out and served on the proctors for the petitioner to be present at the taking of the deposition and to put interrogatories, if he or they might think fit. I have retained the said deposition in my possession for the purpose of filing the same with the Clerk of the Court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said

6850 deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 24th day of December, in the year of our Lord one thousand nine hundred and of the Independence of the United States the one hundred and twenty-fifth.

[SEAL.] THOS. ALEXANDER,

United States Commissioner, for the Southern District of New York.

6851 NEW YORK, March 3, 1903.

Present—THE COMMISSIONER;
Mr. BENEDICT and Mr. MERRIAM for Claimants;
Mr. HALDANE for Petitioner.

ERNEST SCOL, being duly sworn and examined as a witness for the petitioner, testifies:

It is consented that the testimony of this witness It is consented that the testimony of this witness may be taken in the three cases above named, Mr. Benedict representing Mr. Murray in his absence.

6852 By Mr. Haldane:

Q. Are you in the employ of the Compagnie Generale Transatlantique? A. Yes; I was assistant purser; I am pursuer now.

Q. How long have you been in their employment? A. Eleven years.

Q. What was your position with the company on the 2d day of July, 1898? A. I was assistant purser on *La Bourgogne*.

Q. Were you on the boat when she made her last trip? A. Yes.

Q. You were on the boat at the time of the acci- 6353
dent? A. Yes.

Q. Do you know whether any valuables or packages of any kind were deposited with the purser by any of the passengers on that trip?

Objected to, that this is testimony relating to a transaction with parties who are dead, and this witness so represents the opposing party that he is not authorized to give testimony with relation to any such transaction.

Allowed.

A. Nobody gave something to be kept by the purser. 6354

CROSS-EXAMINED BY MR. BENEDICT:

Q. Who was the purser? A. Mr. Durand; I don't know his first name.

Q. He was on board of the vessel at the time of the voyage? A. Yes.

Q. And was lost? A. He was lost, yes. He jumped into the water at the same time with me.

Mr. Benedict moves to strike out the evidence of this witness who cannot have any knowledge as to whether any deposit was made with the purser. 6355

Motion denied.

Q. Were you and the purser together every moment that morning? A. Not all the time.

Q. Were not you on the dock at one time? A. I stay on the pier until all is finished.

Q. Did you see Mr. Faguet there? A. Yes, he was always on the pier.

Q. Do you remember seeing him that morning? A. Yes; certainly.

Q. Do you remember seeing Mr. Deslions there, who is behind me? A. No, I don't remember.

6356 Q. Whereabouts on the pier were you stationed? A. Near where the steerage and second-class gangway is.

Q. Where was the purser's room on board the ship? A. Near where the first-class passengers come in.

Q. What had the purser to do before the ship sailed? A. Nothing.

Q. Nothing at all? A. When somebody asked him to give the rooms, with the chief steward.

Q. He would have to be there to see to that, would he not? A. Yes.

6357 Mr. Benedict again moves to strike out the testimony of this witness. Motion denied.

CROSS-EXAMINED BY MR. MERRIAM:

Q. Does that apply to the entire trip? Do you mean that during that trip there were no deposits of valuables made at any time? A. Yes, I think that.

Q. At previous trips are passengers in the habit of making deposits of valuables with the pursuer to your knowledge? A. Before and after?

Q. At other trips? A. Yes, certainly.

Q. They always do? A. No, not always. When
6358 something is deposited in the safe of the pursuer, if it is second or steerage, they must pass by my hand; if it is first-class, I know afterwards by another system.

Q. You don't mean to say that when you were assistant purser the valuables had to pass through your hands to reach the purser? A. Yes, for the second-class and steerage; not for the first-class; the first-class go directly to the purser. But I know always the deposit in the safe of the purser just for the first-class also.

Q. How do you know? A. Because I must dupli-

cate his receipt. He gives one to the passenger 6359
who gives money, one stays on board, and one goes to Paris in the office, and I copy it twice.

Q. When do you do that copying? A. As soon as they give the deposit.

REDIRECT BY MR. HALDANE:

Q. What became of the books in which those receipts were kept on that trip? A. It probably stayed on the ship.

Q. What became of the book this time? A. The purser gave me the book.

Q. What became of the book? Did it go down with the ship? A. It went down with the ship; 6360
all the papers were in the same box.

Q. Is it lost? A. Yes.

Q. Did you see it? A. Yes, sir; I put it in the box myself.

Q. Was there any record in it of the receipt by the purser of anything? A. No receipt of anything going from New York to Havre by the purser.

Q. And you didn't receive anything yourself from the second or third-class passengers? A. No; nothing.

RECROSS BY MR. MERRIAM:

6361

Q. How do you explain that on this trip no deposits were made, whereas on the previous trips people deposited their valuables? A. Often there is a trip where many passengers give things, and there are other trips where nobody gives anything. When they have checks, they do not give checks; it is not necessary. When they have money they give it. You are not obliged to give your things to the purser.

Q. There is no rule of the company that obliges

6862 it? A. No rule of the company which obliges it, no, sir.

Q. It is simply a precautionary measure? A. As a precautionary measure.

Q. You never heard of any rule requiring a passenger to deposit his valuables with the company? A. Yes, I often say to the passengers "Give your money to the purser," I often ask them.

Q. That is not a rule of the company? A. No, that is not a rule; but we advise the passenger to give that, because we are responsible only for money given to the purser; things not given to the purser we don't know about.

6863 Mr. Merriam: As far as I know there is no evidence to the effect that there was any rule or regulation of the company requiring passengers to deposit their valuables, and it is proved, on the contrary, that there was none.

The Commissioner: If there is no such regulation in evidence, and it is not supplied, as a matter of course this goes out.

Mr. Haldane: I understand that the ticket is in evidence.

Mr. Benedict: I do not so understand it. The record when produced will show.

Mr. Merriam: The objection which Mr. Benedict
6864 has made here that this witness represents the company and that he is testifying to transactions between the company and persons who are now dead, under section 822 of the code, applies to my case as much as to the ones which Mr. Murray represents?

The Commissioner: Yes; and I will further consider that.

Q. Whenever deposits of valuables were made by the first-class passengers, you say that they were made to the purser? A. Yes.

Q. But that you were called to write out the receipt? A. Yes; to duplicate it and triplicate it, I write. 6365

Q. Do you mean that that was because the receipts were in a foreign language and the purser didn't understand? A. No; because the book where we take out the receipt is in three parts; one is a premier that we give to the passenger; the second one, just the same writing, we send to Paris; and the third one we keep on board; and the purser often makes the first and second, and I make the third.

Q. When do you make that third copy? Is it immediately after the deposit is made? A. Immediately after the deposit is made. 6366

Q. If on the day of sailing a passenger had desired to make a deposit with the purser before the ship sailed, how would that passenger have done it? You were occupied, were you not, down on the dock? A. Yes.

Q. They could have gone to the purser and have tendered these valuables? A. Yes. Never the purser will receive any money before we are away from the dock, before we sail.

Q. Was that not the habit of the purser, or is there a rule or regulation in regard to that?

Mr. Haldane objects as immaterial. 6367

A. It is a rule of the company.

Q. How soon after the ship sails will the purser receive valuables? A. As soon as the steerage is on board all finished, as soon as we sail, I go in the room and the purser and I write all the papers. I stay there.

Q. As soon as the steerage are taken care of? A. Yes, sir; as soon as we are sailing I go in the room of the purser, I tell him the number of the

6368 steerage and everything for the business, and I stay in his room to write on this other duplicate or triplicate, all the papers that we have to duplicate. I am a clerk.

(Signing waived.)

Exhibit D. T. A.

UNITED STATES DISTRICT COURT,

6369 SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability and other relief.

6370 Please take notice that Sallie M. Perry and W. C. Perry, of Kansas City, Mo., residing more than 100 miles from place of trial, will be examined, *de bene esse*, pursuant to Sec. 863 of the Revised Statutes of the United States on behalf of W. C. Perry, administrator of the estate of Kate M. Perry, deceased; of the estate of Florence Perry, deceased; of the estate of Sadie Perry, deceased; and of John Perry, father and next of kin of the infants, Katherine Perry and Albert Perry, deceased, claimants herein before H. C. Page, Esq., a Notary Public, duly commissioned and sworn and

qualified to act in the County of Jackson in the 6371
Western District of Missouri, or before some other officer authorized by law to take depositions at the office of Holmes & Perry, Keith & Perry Building, Kansas City, Mo., on the 15th day of February, 1901, at 2 o'clock P. M. and from day to day thereafter until the examination is completed, at which time and place you are hereby notified to attend and put interrogatories to the witnesses if you think fit.

Dated New York, February 8th, 1901.

Yours, etc.,
A. GORDON MURRAY, 6372
Proctor for Claimants,
No. 34 Pine Street, New York.

To Messrs. JONES & GOVIN,
Proctors for Petitioners,
45 Cedar Street, New York.

(Endorsed)—U. S. District Court, Southern District of New York—In the Matter of the Petition of La Compagnie Generale Transatlantique, owner of the Steamship *La Bourgogne*, for limitation of liability and other relief—Notice of taking deposition—A. Gordon Murray, Proctor for Claimants, 34 Pine Street, New York—Copy of the within received this 6373
8th day of February, 1901—Jones & Govin, Procs. for Pets.

UNITED STATES OF AMERICA,
State of Missouri,
County of Jackson, } ss.:

The examination of witnesses *de bene esse*, beginning on the 15th day of February, 1901, on behalf claimants, John Perry, and W. C. Perry, Administrator of the estate of Kate M. Perry, de-

6374 ceased, of the estate of Florence Perry, deceased, and of the estate of Sadie Perry, deceased, before me, Henry C. Page, a Notary Public within and for Jackson County, Missouri, in a certain matter pending in the United States District Court for the Southern District of New York, entitled In the Matter of the Petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, for Limitation of Liability and other Relief.

It was stipulated and agreed between Milton Moore, counsel for the Petitioner, and W. C. Perry, who appeared in his own behalf as administrator
6375 of the above named estates, and as counsel for John Perry, that the following testimony may be taken in short hand by the Notary and afterwards transcribed by him, and then subscribed by the witnesses, whether the same be on the day it was taken, or otherwise, or whether in the presence of counsel or otherwise. It was further stipulated that the fees of the stenographer and notary shall be taxable disbursements in the proceeding.

APPEARANCES:

MILTON MOORE, Esq., for Petitioner.
W. C. PERRY, for himself as administrator and
6376 as counsel for John Perry.

MRS. SALLIE M. PERRY, a witness produced on behalf of Claimants, John Perry and W. C. Perry, Administrator of the estates of Kate M. Perry, deceased, of Florence Perry, deceased, and of Sadie Perry, deceased, being first duly sworn, deposes and says as follows:

DIRECT-EXAMINATION BY MR. GEORGE KINGSLEY:

Q. Please state your name? A. Sallie M. Perry.
Q. State what relation you are to Kate M. Perry,

the deceased, whose estate presents a claim against 6377
La Compagnie Generale Transatlantique? A. Sister.

Q. Where do you reside? A. Thirty-sixth street and Broadway, Kansas City, Missouri.

Q. Are you the wife of W. C. Perry? A. Yes, sir.

Q. And he is a brother of John Perry? A. Yes, sir.

SALLIE M. PERRY.

Subscribed and sworn to before
me this February 28th, 1901.
My commission expires April 19, 1904. 6378

HENRY C. PAGE,
[SEAL.] Notary Public,
Jackson County, Mo.

Not being able to complete the taking of the above depositions, the same is adjourned until tomorrow, Saturday, February 16th, 1901, at 2 o'clock P. M., then to be continued at the same place mentioned in the annexed notice.

Pursuant to adjournment, as above stated, on the 16th day of February, 1901, at the hour of 2 o'clock P. M., at the office of Holmes & Perry, Keith & Perry Building, Kansas City, Mo., I continued the taking of said depositions, as follows:

6379

MRS. SALLIE M. PERRY, in the continuance of her deposition, commenced on yesterday, on her oath further says:

DIRECT-EXAMINATION BY MR. W. C. PERRY:

Q. State what opportunities you had of advising yourself and seeing and knowing, of your own knowledge, what clothing and jewelry your sister, Kate M. Perry, owned and possessed at the time you last saw her? A. When I was here with them,

6380 and I was with her when she bought them sometimes—looking for them.

Q. When did you last see your sister? A. About ten days before she sailed.

Q. Before that for a few days and generally for a period of a year, how much of the time, if any, had you and your sister been together? A. About a third of the time.

Q. What I want to know is what were the chances of your seeing what she had? A. I had been up here for about a week about a month before she sailed, and then about two or three weeks before she sailed she was down with me at Fort Scott for
6381 a week. I then lived in Fort Scott. Then I came up here to bid her good-bye, and was with her a few days then. I don't remember just the length of time. Of course, we saw each other very frequently.

Q. I want to know generally what chances you had of advising yourself, from observation, what jewelry and personal property she had? A. Well, we were together as much as possible.

Mr. Moore: I want to object to any evidence as to her clothing and jewelry unless the witness knows she embarked on the steamship with this clothing and jewelry.

6382 A. For the last few months before she sailed I was with her a great deal——

Q. Now you were here in Kansas City, as I understand you, just before she left for the east? A. Yes, sir.

Q. When your sister left here, state, as far as you know, what clothing or wardrobe she had of her own, without regard to any clothing of the children? A. You want me to mention each dress?

Q. Yes, as far as you can. A. She had a very handsome black lace and satin dress; the lace made over satin. Do you want the value of that?

Q. You may go on and enumerate what she had 6383
as far as you can, and then we will get at the price afterwards? A. She had a purple cloth gown and a foullard silk gown, a plain black silk gown, and two or three black cloth dresses, several silk waists. I do not now recall just—several wash waists. She had silk skirts and some underwear.

Q. Did she have any hats? A. She had hats and wraps. It was a very complete wardrobe for a woman of means; everything was of the best.

Q. Do you know where these dresses, or most of them, were made? A. Some were made by Miss Rose, in the Altman Building, Kansas City. Miss Savage made some. I can't remember the other 6384
dressmaker now. There were two or three dressmakers employed, because there were so many things gotten and they were to be gone sometime. Mrs. Van Arsdale made the underwear. I don't remember the other two dressmakers' names.

Q. You say she was going to be gone for sometime—how long? A. For the summer at least; three months perhaps.

Q. Do you know anything of the value of the wearing apparel Mrs. Perry had when she left here on that trip? A. Yes.

Mr. Moore: I want to object to any evidence as to her clothing and wearing apparel unless the wit- 6385
ness knows she embarked on the steamship with the wearing apparel and clothing.

A. I know she took everything with her; it was made for that purpose.

Q. State now, to the best of your ability, what the wearing apparel that Mrs. Perry took with her, and which, as you say, was made in contemplation of this journey, was worth? A. It was worth about fifteen hundred or two thousand dollars.

Q. State, as far as you can, what jewelry, if any,

6386 your sister had and took with her when she left here; and also its value, if you know what is was worth?

Mr. Moore: I want to object to any evidence as to what jewelry she took with her unless the witness knows she embarked on the steamship with the jewelry, and, further, unless the witness is acquainted with the value of jewelry and diamonds.

A. One diamond pendant worth $650, one solitaire diamond ring worth $500, one solitaire ring worth $450, and one at $100. She had two pairs of cuff buttons; one was a jeweled affair; one amethyst
6387 pair, and the other was just gold. I suppose they were worth $20 or $25. About $20, I think, would cover both of them. A pair of gold eye-glasses, lorgnettes, worth $25.

Q. Did she have a watch? A. Yes; that was worth $125 or $150. That is all I remember now. There was a comb that she gave $7.50 for.

Q. I see that Mr. John Perry, in his deposition, says that his wife had two solitaire diamond rings, for which he paid $350. A. He made a mistake there. He paid $350 for a pair of earrings, and my sister had those set as rings for the children, and they were put down at $175, and he has confused
6388 those with the other rings that I speak of. I put those down on the children's lists as $175 each. It was originally a pair of earrings, and they were set into rings.

Q. State whether, shortly after the loss of your sister and her children, when the matter was fresh in your mind, you made out a list of her jewelry and also a list of that belonging to the children? A. Yes, sir.

Q. Have you a copy of that memorandum now? A. Yes, sir.

Q. Have you refreshed your recollection from it? 6389
A. Yes, sir.

Q. What children did your sister have, if any?
A. Four.

Q. Give their names and the ages of them in the summer of 1898? A. Florence and Sadie were twins; they were between twenty-one and twenty-two. Albert was eleven and Katherine was seven.

Q. Do you know whether your sister took with her from here any wearing apparel for the young ladies, Sadie and Florence? A. Yes, sir; some entirely new.

Q. As near as you can recall, tell what it was? A. Well, there was clothing, dresses, and silk 6390
waists—do you want me to tell all of them?

Q. Well, the number of them? A. Well, there was so many of them.

Q. As I understand, the young ladies were not here during the preceding months, and therefore I suppose you don't know what they had in New York. So I want to know what their mother had made for them here that you do know of yourself. A. Their clothes were duplicates, of course, being twins. They each had a grenadine oversilk, and a couple of cloth dresses made over silk linings, and white evening dresses made over silk, and new silk waists. Mrs. Perry had evening dresses—I did not 6391
mention those, a ball gown or two. The young ladies also had wraps and new underwear.

Q. State whether you were here in Kansas City while they were being made? A. Yes, sir; I had them under inspection. I was here while they were being made by Miss Rose and Miss Savage, and this other woman, Mrs. Van Arsdale.

Q. Do you know in a general way what the clothing you have just referred to as being made here in Kansas City for Sadie and Florence Perry was worth? A. Yes, sir.

6392 Q. State what its value was? A. About four or five hundred dollars each, I should say.

Q. When did you last see Sadie and Florence? A. At Christmas time and New Year's in 1897, Christmas, 1897.

Q. Where? A. In Fort Scott, Kansas.

Q. How did they happen to be there, if you know? A. They came down to spend part of the holidays with me. I was living in Fort Scott at the time.

Q. Do you know whether they had any jewelry of their own? A. Yes, sir; part of this jewelry was given to them at that Christmas time, because they were twenty-one, just twenty-one.

6393 Mr. Moore: I want to object to any evidence as to what jewelry the young ladies had unless the witness knows that they embarked on the steamship with the jewelry.

Q. Well, at the time you last saw the young ladies, along about Christmas, 1897, and New Year's, 1898, state what jewelry they then had of their own? A. They each had a pendant of diamonds and pearls, for which their father had just paid $125 each, and each had a diamond ring of the value of $175 each, a solitaire diamond.

Q .Are they the same rings that you spoke of as having been made from the earrings? A. Yes, sir.

6394 Q. Well, did the young ladies have anything other than the pendants and solitaire diamond rings? A. They each had a new diamond and opal ring that cost about $70 or $75, and were worth those amounts.

Q. Mr. John Perry said in his testimony that they each had a watch. I suppose you don't know anything about that? A. The watch and chain was bought at Tiffany's in New York at the time of their graduation in 1898. You can get the prices from them. That is all I know about them. I said dia-

mond and opal rings; they were diamond and em- 6395
erald. Then they had cuff buttons and stick pins —those things.

Q. What were they worth, if you know? A. Well, I know of their being worth at least $20.

Q. Each had those? A. Yes.

Q. In reference to the jewelry that your sister and her twin daughters had, rather in reference to their value, what were your means of knowing the value of it? A. At the time they bought the diamond and emerald rings and pendants I went with my sister to select them. I was not with her when she purchased them, but she did get them afterwards. 6396

Q. Do you know what she paid for them? A. $125 each.

Q. Is it a fact that you frequently saw the other articles of jewelry that you testified about? A. Yes, sir; I knew them well.

Q. In reference to their value, did you compare them with jewelry of your own or of your friends? A. Yes, sir; I understood their value perfectly, and compared them with my own and those of my friends.

Q. Now, as to the younger children, Albert and Katherine, state what, if any, apparel they had when they left here on the journey, if you know? 6397

Mr. Moore: I want to object to any evidence as to what apparel the younger children had unless the witness knows that they embarked on the steamship with the apparel.

A. The apparel was all new, of the best quality, and plenty of it. They each had some new cuff buttons. Katherine had a little gold chain, but I don't know the value of it. I would not know the value of their clothing. I don't think I remember now, except that they had plenty.

6398 Q. Do you know whether your sister had any trunks, bags, or valises? A. Yes, sir; had several; I don't remember their number, but it seemed to me a great many. I saw them being packed.

Q. When your sister and two younger children left Kansas City in the latter part of June, 1898, where were they going, if you know? A. My sister and the two younger children left Kansas City for New York. The twins were then at school. From New York they were to sail for Europe.

Q. Was that the trip that they had in contemplation when they left here? A. Yes, sir; the European trip was the one they had in contemplation;
6399 and after remaining in New York about a week they took the steamer on which they were lost.

Q. Do you know anything about any money which your sister had when she left here?

Mr. Moore: I want to object to any evidence as to what money Mrs. Kate M. Perry had with her when she left Kansas City unless the witness knows that she embarked on the steamship with the money.

A. Yes; she had money of her own when she left here.

Q. Do you know anything about the amount, if she said what it was? A. She told me at the time
6400 that she thought it was $490.

Mr. Moore: I object to what Mrs. Kate M. Perry told the witness; it is mere hearsay.

CROSS-EXAMINATION BY MR. MILTON MOORE.

Q. At what time did Mrs. Kate M. Perry visit you in the summer of 1898? A. I saw her here; it was in June, early part of June, 1898.

Q. How long did she remain with you? A. About a week.

Q. You were living at Fort Scott, Kansas, at the

time, but your home is now in Kansas City, Mis- 6401
souri? A. Yes, sir.

Q. Did you return with her on that occasion? A. No; but I came a few days after.

Q. When did you come to Kansas City before she left for the east? A. About a week before she left.

Q. And you were with her then up until the time of her departure? A. Yes, sir; I was not here the day she left, though. I went home the day before she left, or may be two days.

Q. So you were not here at the time of her departure? A. No, sir.

Q. So you don't know what she took with her? A. Well, I saw her trunks in the process of being 6402
packed.

Q. But you did not see them transported away? A. No, sir; I was not here, but I never saw them afterwards, so I am convinced they went with her; I don't know what else she would have them for.

Q. Do you know just the day of her departure from this place? A. I think it was the 22d of June.

Q. My reason for asking the question is, if I understand your testimony, I think you said you saw your sister about ten days before she sailed? A. Yes, sir; she sailed on the 2d of July, and I saw her here just a day or two before the time she left. I could get those dates exactly, because we were at 6403
the Washington Hotel. I suppose their register would state.

Q. I think you stated that her wardrobe was worth about $1,500 or $2,000? A. Well, I know several dresses cost as much as $200. There was one at $150 and there was one, that is the black lace and satin, was worth $175, and I know that nothing cost less than $75 or $80.

Q. Do you know what dress cost $200? A. I think it was the purple cloth. It was either $200 or $250. I know it was quite an expensive gown.

6404 Q. How do you know that it cost that? What was your means of information on the subject. A. Because I was with her at the time the bills came. This purple cloth and one other gown was made in New York City, and the bills came in for nearly $400 for the two gowns. The purple cloth was the more expensive.

Q. Do you know what firm of dressmaker made these dresses in New York? A. I think Hollander.

Q. Do you know the location of their place? A. No, sir; I have never been there. I know she had two or three gowns made that spring, made there; but I am not sure that these two are the ones. I
6405 remember being in Kansas City late in the spring when this bill came.

Q. Now, this purple cloth and the other gown that you speak of that made up the bill of $400, were they entirely new when you were here? A. Yes, sir.

Q. When did these bills come, if you know? A. I could not tell that—along in the spring. She wore her purple gown a few times. I do not like to be explicit on that subject, because I was not here all the time.

Q. What I wanted to know is if the bills came in the last time you were here? A. No; not the last
6406 time, the time before that it was.

Q. The purple gown and the other costly gowns were gotten some time in the spring of 1898? A. Yes, sir; these gowns from Miss Rose were expensive gowns.

Q You have mentioned several gowns here. What were the gowns that came from Miss Rose? A. The foulard and grenadine made over satin, and a cloth —I think a braided cloth and some silk waists.

Q. Do you know what the foulard cost? A. It was $85.

Q. Do you know when it was gotten? A. Just 6407
came home in time to be put in the trunk.

Q. It was an entirely new dress? A. Yes, sir; never been worn.

Q. How do you know that it cost $85? A. Because I was at the dressmaker's when she was contracting for the gowns, and the black grenadine and satin was either $150 or $175. I was there when she was having those made.

Q. Do you know that those gowns were put in the packing trunk? A. Yes, sir; I saw those put in.

Q. Now, can you specify any other articles excepting the underwear that you can remember the cost or value of? A. She had a little jacket that 6408
she gave $45 for, and she had a new hat that she gave $31 for. I just happened to be with her and happened to remember some of those. No; I don't know what her other things came to.

Q. Then the remainder of that bill or the sum of $1,500 or $2,000 is rather an estimate than giving the aggregate of the cost of each item? A. Yes.

Q. Now, your means of arriving at the value of these articles is the cost price that you learned at the time? A. At the time; yes, sir.

Q. You have no other means of fixing their value? A. No.

Q. There was one item, a diamond pendant, men- 6400
tioned here, upon which you place a value of $650. How did you fix the value of that? A. I only know that from what Mr. Perry and his wife both told me that it was and the relative value between one of my own? I knew that to be—

Mr. Moore: I object to what was told her by Mr. and Mrs. Perry as hearsay.

Q. Then you had one similar to that one owned by your sister? A. Yes, sir; but much smaller, smaller stones.

6410 Q. Well, if yours were smaller, how did you fix the value of Mrs. Perry's which were larger? A. The diamonds were very much larger than mine, which, of course, has a great deal to do with the value of diamonds.

Q. Have you any knowledge of the value of diamonds beyond that gained by the purchase of jewels? A. No; except by observation and information.

Q. How long had Mrs. Kate Perry owned this pendant, if you know? A. She got it eight or nine years ago.

Q. She probably bought it about 1891 or 1892?
6411 A. About 1892 or 1893.

Q. Do you know whether there has been any increases in the value of diamonds since 1891? A. No, I do not.

Q. Now, I notice here a solitaire ring, $500. Was that your statement? A. Yes.

Q. How did you fix the value of that? A. Through a jeweler. One of those rings—I was trying to think. I fixed the value of that ring through a jeweler in Fort Scott. He estimated it while it was in my possession.

Q. Of your own knowledge you don't know the value of it? A. I was not with Mr. Perry when he bought it, but I think I know its value.

6412 Q. Outside of what the dealer's estimate was you do not know? A. He estimated it just about what Mr. Perry said he gave for it.

Q. Did you get the jeweler's estimate from him or from Mr. Perry? A. The first time from Mr. Perry, and another time I took them in to get them cleaned for my sister, and he put an estimate on them then.

Q. That was how long ago? A. That was four—maybe five—years ago.

Q. What was the jeweler's name? A. David 6413
Prager, Fort Scott, Kansas.

Q. Is he in business there now? A. Yes, sir. I did not take those rings in with the idea of having them priced. I took them in to have them cleaned, and he admired them very much, and he estimated them in that way, and I said, "Yes, that is just about what Mr. John Perry paid for them."

Q. Now, this last statement covers the two rings that are valued at $500 and $450? A. Yes, sir.

Q. Now, you state another one at $150? A. I said $100, I think. It was a smaller diamond. I think you are mistaken; it was $100 I had on my list; it was just a small diamond. 6414

Q. You mention two pairs of cuff buttons and gold eye-glasses. I will pass those—and a watch valued at $150? A. I was not with them when that was bought.

Q. You don't know what she gave for them? A. She told me what Mr. Perry gave.

Q. Then you only know from hearsay? A. Yes, sir.

Q. Now, recurring to the property that belonged to the two young ladies. You had not seen them since New Year's, 1898, so what property they had gotten in New York you did not know? A. No; except what Mr. Perry had told me. 6415

Q. What dress goods did Mrs. Perry take with her for the young ladies—I mean dresses? A. There were evening dresses and street dresses. You want me to give every one?

Q. Only to the extent to state the means of your estimate of the value? A. I was with my sister at Miss Rose's when she was having made a cloth dress apiece, an evening gown apiece, and a calling gown apiece, and two or three handsome silk waists. Miss Savage made each a party dress and each a white soft cloth over silk. I think she made them

6416 some evening waists, and their wraps they bought after they got to New York; at least she was prepared to buy their wraps. They had some wraps with them. But right new wraps she intended to buy them in New York.

Q. Do you know what the correct amount of the bills of Miss Rose was for the dresses you have mentioned? A. No; I do not.

Q. And you don't remember what the new dresses cost? A. I only remember the prices of some.

Q. What prices do you recollect? A. There were to be two gowns for the girls at $75 each; that is, one for each girl, and one for each at $80 and $85.
6417 I never knew what the bill was. Those were only estimates. And waists at $25 each, and there were, I think, four waists altogether made there. I know there were four waists; and that is all I can be definite about. I never knew what Miss Savage's bills were. I saw the accounts and was with my sister when she was being fitted for her daughter's gowns. What fitted the mother fitted the daughters. But I did not hear any estimate placed on those at all. I imagine they were not less than $70 or $75 each.

Q. Then the valuation that you placed on the goods that Mrs. Perry bought here for her two daughters, except the articles mentioned, is just an
6418 estimate? A. An estimate based on knowledge and cost and quality of the clothing.

Q. Now, you spoke of each of the young ladies possessing a watch that I understand you say was given them at their graduation in New York in 1898? A. Yes, sir.

Q. You did not see the watches? A. No; they were bought at Tiffany's. I think you can get the bills if you care to.

Mr. Moore: I move to strike out that part of Mrs. 6419
Perry's evidence referring to the two young ladies' watches.

Q. Now, the cuff buttons that the young ladies possessed; did you see those? A. Yes; I saw the cuff buttons, but I was not with my sister when she bought them. That is merely an estimate placed on them.

Q. You said something about emeralds and diamonds and I did not understand it? A. I gave it out as an opal or diamond ring for $75 or $70 that the young ladies had, but they were small emeralds and diamonds. I was just changing the description. We did look at opals for them, and I remember that afterwards my sister in making the purchase changed and got the small emeralds. 6420

REDIRECT-EXAMINATION BY MR. PERRY:

Q. In speaking of the value of the wardrobes of your sister and her two grown children, after giving the cost of some of the gowns and other articles, you say that the rest of your statement of values in that respect is an estimate. Now, what do you base that estimate on? A. On the completeness of their wardrobe and the costliness of the articles.

Q. Well, have you estimated the value of anything you did not see? A. Oh, no. 6421

Q. Well, then, did you know the kind of material that was in the articles? A. Yes, sir.

Q. I mean those articles that you affixed a specific value to? A. Yes.

Q. Well, have you been buying articles of apparel for yourself? A. Yes; that helped me to make an estimate of these. I knew the value of such things.

Q. Would or would it not be a better way to express your idea that that is your judgment as to the value of those things rather than it is your esti-

6422 mate? A. Yes, sir; I suppose that would be a better way.

Q. And you arrived at that judgment from a knowledge of the material and from experience of buying clothing for yourself? A. Yes, sir; and on account of their position in life.

Q. And the recent graduation of the young ladies from school, and they had to have everything new and change to make their formal appearance in society? A. Yes.

Q. Well, is that statement also true, or not, in reference to the dresses and other clothing of your sister, to which you did not attach a specific value,
6423 or of which you did not see the bills? A. Yes.

Q. Now, as to the value of the jewelry, state whether or not you compared the value of these diamonds, etc., of your sister's, as stated by you, with the value of your own and of those of other ladies?

Mr. Moore: I object to the question unless it is shown with whose diamonds the comparisons were made.

A. Yes, sir.

Q. Is it a fact, or not, that the valuation of the jewelry given in your testimony is the result of
6424 your information and observation, and your knowledge as to the value, not only of your sister's jewelry, and also of your own, and that of others? A. Yes, sir.

Q. Then it is true that your statement of values, placed by you on the jewelry, is the expression of your own judgment as to those values? A. Yes; and from what they told me, and from observation and inquiry.

Q. Now, as to the wardrobe of the two younger children did you or not see the clothing that had been gotten for them when you were last in Kansas

City a day or two before your sister left? A. Yes, 6425
sir; I saw it.

Q. What did it consist of, name the articles? A. For the boy there were new suits, new shoes, new overcoat, wrap of some kind, new underwear, shirts and neckties—complete new summer outfit for a boy who was to be away from home for several months. For the little girl there were new dresses, jackets, bonnets, hats, gloves, new underwear—all the daintiest kind and most appropriate for a child of seven years old. There were two or three silk dresses, and wash dresses. I could hardly estimate the values, not having a child of that age. The boy's outfit was not as costly as the girl's. 6426

Q. Are you able, from what you knew of the cost of those things, and from what you saw as to their quality, and from your general knowledge obtained from purchasing articles, if you had any, to tell, in a general way, what the outfit of the boy was worth?

Mr. Moore: I object to any evidence as to the value of the boy's outfit unless it is shown that it was embarked with him when he sailed on the steamship, and, also, as the witness has stated she does not know the value of the articles.

Q. Well, if you cannot, just say so? A. No, I cannot. I am unable to do so.

Q. Since your sister and her children left here 6427
about June 22, 1898, state whether you have ever seen them or heard from any one of them? A. Yes, we had two letters written from New York just before sailing. The last was written on the 1st of July, saying she would sail the next day on the French steamer.

Mr. Moore: I will have to object to the contents of the letter, as that would be the best evidence, and for that reason, also, that it is immaterial.

Q. You need not say what was in the letters. What I was trying to get at is when you last heard from your sister or her daughters, or when you saw them last? A. The last I saw of them was June 22, 1898, and the last I heard from them was a letter written in New York on the 1st of July, 1898.

Q. Where was the home of your sister and her husband and family? A. In Kansas City.

Q. Did they have a house here, if you know. A. They were just building a new home, and were living at the Washington Hotel the previous winter.

Q. When they left home did they go away with the intention of staying away, or of returning, do you know? A. Of returning in a few months.

REDIRECT-EXAMINATION BY MR. MOORE:

Q. I understand you to say that you based your judgment of the value of Kate M. Perry's diamonds from a comparison made with diamonds of your own and other ladies? A. Well, I feel I was not giving just the right answer in that. They told me what they cost, and I was with them at the purchase of some, and others I estimated with my own and those of others.

Q. The starting point of comparison was the statement of Mr. and Mrs. Perry as to what they cost? A. Yes; if I was not with them.

Q. I am speaking of those cases in which you were not present at the purchase. With whose diamonds did you compare Mrs. Kate Perry's other than your own? A. With friends. I don't remember any just now, except Mrs. B. P. McDonald and Mrs. C. W. Goodlander, both of Fort Scott, Kansas.

Q. Where were they buying diamonds? A. Some were bought through David Prager, he ordered them—and some were bought of Jaccard in St. Louis, and Oppenheimer, a jeweler in Kansas City.

Q. Well, how did you get information as to what 6431
those ladies gave for their diamonds? A. What they told me.

Q. Not otherwise? A. No; I was not with them when they bought them.

Mr. Moore: I move to strike out all the evidence as to comparison of jewels so far as concerns the diamonds of other ladies other than herself mentioned in the testimony, for the reason that the value of those diamonds, and the evidence relating thereto, is hearsay.

Q. You are not an expert in diamonds and in the valuation of them? A. I know a good diamond 6432
when I see it, but I don't know why.

Q. Do you deem yourself an expert on the value of diamonds? A. Hardly an expert.

Q. What comparisons have you made of Mrs. Kate M. Perry's diamonds with your own, and when were these comparisons made? A. At the time of purchase—I don't understand how I can answer that question. Hers were larger and finer stones than mine, and the comparisons were made at the time of the purchase either of my own or of hers.

SALLIE M. PERRY,

Subscribed and sworn to before me
this 28th day of February, 1901. } 6433
My commission expires April 19, 1904.

[SEAL.] HENRY C. PAGE,
Notary Public,
Jackson County, Me.

The petitioner's counsel states that he does not consent to the taxation of costs of taking this deposition except out of any fund that may be in Court for distribution.

6434 W. C. PERRY, a witness produced on behalf of claimants, John Perry and W. C. Perry, Administrator of the estates of Kate M. Perry, deceased, of Florence Perry, deceased, and of Sadie Perry, deceased, being first duly sworn, deposes and says as follows:

I attach hereto copies of my appointment as administrator of the estate of Kate M. Perry, deceased, of the estate of Florence M. Perry, deceased, and of the estate of Sadie Perry, deceased, certified to in accordance with the act of Congress, and marked them Exhibits A, B and C.

I am the same W. C. Perry named in said copies,
6435 and am the same W. C. Perry who as administrator of the estates just named, and who commenced in Chicago, Illinois, the suits against the La Compagnie Generale Transatlantique, referred to in this proceeding, and am the same W. C. Perry who filed claims in this proceeding.

Personally I do not know anything about the values of the property sued for. I do know that some time in June, 1898, my brother's wife, Mrs. Kate M. Perry, and her two younger children came to my house in Fort Scott, Kansas, and visited in my family for about a week, and afterwards, some time near the middle of the month of June, I
6436 brought my family to Kansas City on a visit to my brother and his family. That was the last time I ever saw Kate M. Perry, or either of her two younger children, Albert and Katherine. I had not seen the twin sisters, Florence and Sadie, since sometime near New Year's previous, at which time they visited me and my family at Fort Scott, Kansas. My brother and his family had lived in and made their home at Kansas City for about ten years prior to 1898. At the time arrangements were made for the journey of Mrs. Perry and the children to Paris, my brother was engaged in

building a residence in this city, which it was understood was to be the future home of his family. He expected to have it completed during the year 1898, and it was understood in the family that Mrs. Perry and her children would return from their European trip to this city and take up their home life in the new house sometime near the end of that year, 1898. I was with my brother here in Kansas City at the time he made the arrangements, and he and I discussed together the way and manner in which the journey could be best made by his wife and children, and the length of time they were to be absent. 6437

6438

CROSS-EXAMINATION BY MR. MOORE:

Q. The tickets I presume were bought in New York? A. Yes; I had nothing whatever to do with them.

Q. Have you ever, in traveling on the railroads, been in the habit of examining tickets to see that they had on them any limitations as to liability? A. I happened to be either directly or indirectly connected with or employed by a railroad company for a great many years, and I very rarely bought a ticket.

Q. Have you ever examined passes to see whether there were any limitations as to liability? A. Why, yes; I know as a general thing every pass I ever had had on it a contract by which the holder of the pass agreed to assume all liability that might occur by the use of it. 6439

Q. Have you ever made a trip across the ocean? A. Once, in 1873.

Q. So then your observation goes to railroad tickets instead of steamship tickets? A. My observation goes to passes instead of tickets. I have bought some railroad tickets. I don't think I ever

read them except to see that they would take me to
6440 the point where I wanted to go.

W. C. PERRY.

Subscribed and sworn to before me this February 28, 1901.

My commission expires April 19, 1904.

[SEAL.] HENRY C. PAGE,
Notary Public,
Jackson County, Mo.

Petitioner's counsel states that he does not con-
6441 sent to the taxation of costs of taking this deposition except out of any fund that may be in Court for distribution.

UNITED STATES OF AMERICA,
State of Missouri,
County of Jackson, } ss.:

I, the above-named HENRY C. PAGE, do hereby certify that pursuant to the annexed notice issued and served in the above-mentioned cause, intitled In the Matter of the Petition of La Compagnie Generale Transatlantique for Limitation of Liability and Other Relief, I was attended at my office aforesaid,
6442 in the Keith & Perry Building, Kansas City, Missouri, by W. C. Perry, on behalf of himself as administrator, of the estate of Kate M. Perry, deceased, of the estate of Florence Perry, deceased, and of the estate of Sadie Perry, deceased, and as counsel for John Perry, and also by Milton Moore, of counsel for the Petitioner, La Compagnie Generale Transatlantique, on the several days and dates hereinbefore stated; that the aforenamed witnesses Sallie M. Perry and W. C. Perry, who were of sound mind and lawful age, were by me first

carefully examined and cautioned and duly sworn 6443
to testify the truth, the whole truth and nothing but the truth, and they thereupon testified as is above shown; and that the depositions by them subscribed were, by agreement of counsel made previous to the commencement of the depositions, first by me reduced to shorthand writing in the presence of the witnesses themselves, and from their statements, and were afterwards by me transcribed, and were subscribed by the said witnesses in my presence, and were taken at the place in the annexed notice specified and at the times as set forth, adjournments being had or taken from day to day as provided in said notice; and that all was 6444
so done, written, and signed in pursuance of agreement of counsel and of the notice hereto attached.

I further certify that the reason for taking said depositions was and is, and the fact was and is, that all of the deponents live in Kansas City, Jackson County, Missouri, more than one hundred miles from the place where the said Matter of the Petition of La Compagnie Generale Transatlantique is appointed by law to be tried; that I am neither of counsel or attorney to either of the parties to said suit, nor interested in the event of said cause; and that, it being impracticable for me to deliver said depositions and the exhibits thereto attached with 6445
my own hand into the Court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand, and speedily and safely transmitted to the said Court for which it was taken, and to remain under my seal until then opened.

As witness my hand and seal this February 28, 1901, at Kansas City, Jackson County, Missouri.

[SEAL.] HENRY C. PAGE,
Notary Public,
Jackson County, Mo.

6446

TAXATION OF FEES.

To transcribing 70 folios at 15 cents per folio $10.50
To certificate and seal..... .50

$11.00

Paid by Claimants, W. C. Perry, Administrator, etc., and John Perry.

HENRY C. PAGE,
Notary Public.

6447

Exhibit A.

LETTERS OF ADMINISTRATION.

STATE OF MISSOURI, } ss.:
County of Jackson. }

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye, that whereas, KATE M. PERRY, late of the County of Jackson, died intestate, as it is said, having at the time of her death, property in this State, which may be lost, destroyed, or diminished
6448 in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed of according to law, we do hereby appoint W. C. Perry, Administrator of all and singular the goods and chattels, rights and credits which were of the said Kate M. Perry at the time of her death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts or things which are, or hereafter may be required by law.

In witness whereof, I, H. P. Hersperger, Clerk of 6449
the Probate Court, within and for the County and State aforesaid, have hereunto set my hand and affixed the seal of said Court, at office in Kansas City, this 29th day of June, 1899.

[SEAL.] H. P. HERSPERGER,
Clerk.

Clerk's Certificate.

STATE OF MISSOURI, }
Jackson County, } ss.:

I, H. P. HERSPERGER, Clerk of the Probate Court 6450
within and for the County and State aforesaid, hereby certify that the above and foregoing is a full, true and complete transcript of the Letters of Administration issued to W. C. Perry on the estate of Kate M. Perry, deceased, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Kansas City, Mo., this 1st day of March, A. D., 1901.

[SEAL.] H. P. HERSPERGER,
Clerk.

6451

Judge's Certificate.

STATE OF MISSOURI, }
County of Jackson. } ss.:

I, J. E. GUINOTTE, sole Judge of the Probate Court of Jackson County, and State of Missouri, do hereby certify that the above named H. P. Hersperger, by whom the foregoing attestation was made, was at the time of so making the same, and

6453 is now, the Clerk of said Court, to all whose acts as such, full faith and credit should be given as well in Courts of this jurisdiction as elsewhere; that the seal thereto annexed is the seal of said Probate Court, which said attestation so made by him is in due form of law, and that he was entitled so to do.

Witness my hand this 1st day of March, A. D., 1901.

J. E. GUINOTTE,
Judge.

6455 **Exhibit B.**

LETTERS OF ADMINISTRATION.

STATE OF MISSOURI, } ss.:
County of Jackson. }

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye, that whereas, Florence Perry, late of the County of Jackson, died intestate, as it is said, having at the time of her death, property in this State, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to
6454 the end, therefore, that said property may be collected, preserved and disposed of according to law, we do hereby appoint W. C. Perry, Administrator of all and singular the goods and chattels, rights and credits which were of the said Florence Perry at the time of her death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts or things which are, or hereafter may be required by law.

In witness where, I, H. P. Hersperger, Clerk of 6455
the Probate Court, within and for the County and State aforesaid, have hereunto set my hand and affixed the seal of said Court, at office in Kansas City, this 29th day of June, 1899.

[SEAL.] H. P. HERSPERGER,
Clerk.

Clerk's Certificate.

STATE OF MISSOURI, }
Jackson County, } ss.:

I, H. P. HERSPERGER, Clerk of the Probate Court 6456
within and for the County and State aforesaid, hereby certify that the above and foregoing is a full, true and complete transcript of the Letters of Administration issued to W. C. Perry on the estate of Florence Perry, deceased, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Kansas City, Mo., this 1st day of March, A. D., 1901.

[SEAL.] H. P. HERSPERGER,
Clerk.

6457

Judge's Certificate.

STATE OF MISSOURI, }
County of Jackson. } ss.:

I, J. E. GUINOTTE, sole Judge of the Probate Court of Jackson County, and State of Missouri, do hereby certify that the above named H. P. Hersperger, by whom the foregoing attestation was made, was at the time of so making the same, and is now, the Clerk of said Court, to all whose acts as

such, full faith and credit should be given as well in Courts of this jurisdiction as elsewhere; that the seal thereto annexed is the seal of said Probate Court, which said attestation so made by him is in due form of law, and that he was entitled so to do.

Witness my hand this 1st day of March, A. D., 1901.

J. E. GUINOTTE,
Judge.

Exhibit C.

LETTERS OF ADMINISTRATION.

STATE OF MISSOURI, }
County of Jackson. } ss.:

TO ALL PERSONS TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye, that whereas, SADIE PERRY, late of the County of Jackson, died intestate, as it is said, having at the time of her death, property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed of according to law, we do hereby appoint W. C. Perry Administrator of all and singular the goods and chattels, rights and credits which were of the said Sadie Perry at the time of her death, with full power and authority to secure and dispose of said property, according to law, and collect all moneys due said deceased, and in general to do and perform all other acts or things which are, or hereafter may be required by law.

In witness whereof, I, H. P. Hersperger, Clerk of the Probate Court, within and for the County

and State aforesaid, have hereunto set my hand 6461
and affixed the seal of said Court, at office in Kansas City, this 29th day of June, 1899.

[SEAL.] H. P. HERSPERGER,
Clerk.

Clerk's Certificate.

STATE OF MISSOURI, }
Jackson County, } ss.:

I, H. P. HERSPERGER, Clerk of the Probate Court within and for the County and State aforesaid, hereby certify that the above and foregoing is a 6462
full, true and complete transcript of the Letters of Administration issued to W. C. Perry on the estate of Sadie Perry, deceased, as the same remains of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Kansas City, Mo., this 1st day of March, A. D., 1901.

[SEAL.] H. P. HERSPERGER,
Clerk.

Judge's Certificate. 6463

STATE OF MISSOURI, }
County of Jackson, } ss.:

I, J. E. GUINOTTE, sole Judge of the Probate Court of Jackson County, and State of Missouri, do hereby certify that the above named H. P. Hersperger, by whom the foregoing attestation was made, was at the time of so making the same, and is now, the Clerk of said Court, to all whose acts as such, full faith and credit should be given as

6464 well in Courts of this jurisdiction as elsewhere; that the seal thereto annexed is the seal of said Probate Court, which said attestation so made by him is in due form of law, and that he was entitled so to do.

Witness my hand this 1st day of March, A. D. 1901.

J. E. GUINOTTE,
Judge.

UNITED STATES DISTRICT COURT,

6465

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6466

SIRS:

Please take notice that the petitioner above named, hereby objects to the allowance of the claim filed with the Commissioner in this cause by the S. S. White Dental Manufacturing Company, and prays that the same may be disallowed and excluded unless established by further legal *prima*

facie proof on notice to the proctor for the petitioner, as in ordinary cases. 6467

Dated, New York, April 19th, 1902.

EDWARD K. JONES,
Proctor for Petitioner.

To THOMAS ALEXANDER, Esq.,
Commissioner, and
Messrs. BENEDICT & BENEDICT,
Proctors for Claimant.

(Endorsed)—Notice of objection to claim of S. S. White Dental Manufacturing Company.—Filed Apr. 21, 1902. 6468

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability. 6469

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 19th day of March, 1902, opening the default of the S. S. White Dental Company, *et al.*

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon

6470 which said order is based, and the exhibits and papers thereto annexed, together with said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated, New York, March 19th, 1902.

Yours, etc.,

EDWARD K. JONES,

Proctor for Petitioner.

To Hon. THOMAS ALEXANDER, Clerk.

6471

(Endorsed)—Exception to order of March 19th, 1902.—Filed Jul. 29, 1904.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

6472

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for Limitation of Liability.

On motion of R. D. Benedict, appearing specially for the purposes of this motion for George Desliens, *et al*,

On the papers and proceedings in this matter, 6473
and the affidavits hereto annexed, it is

Ordered, that the petitioner herein show cause before me at the opening of this Court on the 23d day of May, inst., or as soon thereafter as counsel can be heard:

1st. Why the petition herein should not be dismissed because it does not set forth facts sufficient to confer jurisdiction on the Court.

2d. If the said petition shall not be dismissed on that ground, then why the order for an injunction and monition herein should not be set aside because, at the time the said order was made no transfer of interest and no property whatever had been delivered to the Trustee appointed by the Court, and because no transfer has ever been made of the interest which the petitioner had on the 4th of July, 1898, in the steamship *La Bourgogne*, and her pending freight. 6474

3d. If the said order shall not be set aside as above, then why an order shall not be made that no service of said injunction order shall be made on any of the parties named in said petition until the said petitioner shall have put on file in this action a written consent that any evidence taken in 6475
any action pending between such party and the petitioner may be read on any trial of this proceeding, and until the plaintiff's costs in any such action up to the date of such service shall have been paid.

Or why such other and further order should not be made in the premises as to the Court shall seem just.

And in the meantime let all proceedings herein

6476 on behalf of the petitioner be stayed, except publication of the monition.

ADDISON BROWN.

May 16, 1900.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

6477 OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for Limitation of Liability.

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, deposes and says as follows:

I have learned that an order for injunction has been made in this matter. At the time when the
6478 said order was signed no paper purporting to be a transfer of any interest of the petitioner herein had been delivered to the Trustee, whom the Court had appointed, nor had any property whatever been delivered to such Trustee.

On examining the paper by which the interest of the petitioner is admitted to be transferred to the trustee, I find that said paper does not purport to transfer whatever interest the said petitioner had in said steamship *La Bourgogne* and her freight pending at the time of the disaster alleged in the petition, but it only purports to transfer the in-

terest of the said Company on the date of said 6479
transfer.

Previous to the filing of the petition in this matter a similar petition had been signed on behalf of the same petitioner, which was also verified by the same agent of the Company, who has verified the petition in this matter, and that in said first petition it was positively alleged that the steamship *Bourgogne*, together with her cargo and pending freight had become a total loss, and that "the amount or value of the petitioner's interest in such vessel and her pending freight and of its interest as owner of such vessel and her pending freight is and amounts to nothing. 6480

And deponent further says that he is one of the attorneys for George Deslions in the suit referred to in the petition in this matter. That the said suit of George Deslions against the petitioner herein was begun in the Circuit Court of the United States, for the Southern District of New York, on the 15th of May, 1899. That the said suit is brought to recover damages for the loss of a large amount of property belonging to said Deslions, which was on board the steamship *La Bourgogne* when she was lost, as alleged in the petition, and also to recover damages for the loss of the wife and child of said Deslions, who were passengers on board of said 6481
steamship at the time, and lost their lives in said collision.

That on the commencement of said suit Messrs. Eustis, Jones & Govin appeared as attorneys for the defendant herein, and that their time to answer the complaint in said suit was at their request extended by several extensions until the 3d day of October, 1899, when the answer of the said Company was received, and said cause was thereby put at issue. And deponent further says that on the 28th of July, 1899, the examination of a witness on

behalf of the plaintiff in said action was begun. The name of said witness was Dufour, who was on board of the *Bourgogne* at the time of the disaster, and gave testimony in regard to the occurrences at the time. His direct-examination was closed and his examination was then adjourned for the purpose of cross-examination by the counsel for the said Company, but the counsel for said Company has never produced said witness for examination, and said examination has been at their request, adjourned from time to time, and now stands adjourned.

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And deponent further says that he had information that Oscar H. Henderson, the master of the ship *Cromartyshire*, the vessel by collision with which the *Bourgogne* was sunk, was in England, about to sail on a voyage to Japan; that accordingly an order was obtained on behalf of the plaintiff that a commission should issue to examine said Henderson. Such order was obtained on the 23d of October, 1899, and on that day the interrogatories to be put to said Henderson were served. That cross-interrogatories were served on the 27th of October, and the commission was at once forwarded to England, to be executed, but before it reached its destination said Henderson had sailed as master the ship *Largolaw* to Nagasaki, Japan. That thereupon the said Commission was returned, and on the 10th of January, 1900, was by consent of both parties, forwarded to Nagasaki, in order that the testimony of said Captain Henderson might be taken on his arrival there. That deponent has heard of the arrival of said vessel at Nagasaki, but has not as yet heard that said commission has been executed. And that the testimony of said Henderson will be material and necessary in behalf of said Deslions on the trial of the petition in this case should it ever be tried, and that the testimony of

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said Dufour will also be material and necessary 6485
for the plaintiff Deslions on the trial of said petition.

And deponent further says that Francis Poirot, who was at one time master of the *Bourgogne*, and later master of petition's steamer *La Champagne*, was also examined as a witness in reference to matters material to the trial of this petition, and that the testimony of said witness will be also material and necessary for said Deslions on the trial of this petition if the same shall ever be brought to trial. And deponent further says that the necessary disbursements in the said suit of said Deslions for Clerk's fees, service of papers, witnesses' fees, 6486
copies of documents, etc., etc., which were necessary disbursements in said case, already amount to $68.32, besides the expense of the execution of said commission to Nagasaki, and that the costs in said suit up to date will amount to twenty-five dollars more.

And deponent further says that on the 23d of October, 1899, deponent's firm commenced in the United States Circuit Court for this District, an action against the petitioner herein in behalf of Adrian Hummel, to recover damages by him sustained by reason of the loss of the *Bourgogne* mentioned in the petition herein, and that the Peti- 6487
tioner appeared in said action and on the 4th of December, 1899, served an answer whereby said action was put at issue, and that the necessary disbursements in said action were $7.82, and the costs amount to twenty dollars more.

R. D. BENEDICT.

Sworn to before me this
16th day of May, 1900.
WM. F. JONES,
[SEAL.] U. S. Court,
S. D. of N. Y.

6488 **Endorsed Affidavit and Order.**

Let the petitioners within ten days give bond to render account of passage money collected in New York, and to pay such parts thereof as may be ordered to be paid over by the decree of the Court, and also such sums as may be hereafter ordered to be paid on account of costs and expenses of the creditors represented on this motion, in their suits prior to the petition; and on such bond being given the within stay will be dissolved; and meantime petitioners are at liberty to proceed with publica-
6489 tion and service of notices upon creditors or damage claimants.

May 25, 1900.

A. BROWN.

(Endorsed)—Filed February 7th, 1905.

6490

At a Stated Term of the District Court 6491
of the United States, for the Southern
District of New York, held in the
Court Room in the Post-Office Build-
ing in the City of New York, on the
15th day of June, 1900.

Present—Honorable ADDISON BROWN,
District Judge.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of S. S. *Bourgogne*, for Limitation of Liability. 6492

An order to show cause herein having been made on the 16th day of May, 1900, on affidavits, and the said order to show cause coming on to be heard, and having been argued by counsel for the respective parties, It is now

Ordered (1st) That the exception to the jurisdic- 6493
tion of the court, and the motion to dismiss the petition, on the ground that the petition herein did not state facts sufficient to confer jurisdiction upon the court, be, and the same is hereby overruled and denied.

(2d) That the motion to set aside the order for a monition and injunction herein on the ground of irregularity be and the same is hereby denied.

(3d) That the motion for an order that no service of the injunction order heretofore granted herein be made on any party until the Petitioner

6494 should give a consent that any evidence taken in any action between such party and the Petitioner may be read in the present proceeding, and until the Petitioner shall have paid the costs in said action up to the date of such service, be and the same is denied.

ADDISON BROWN.

(Endorsed)—Order denying motion and exception—Filed February 7th, 1905.

6495

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for Limitation of liability and other relief.

6496

On the annexed affidavit of Edward K. Jones, Esq., verified the 13th day of June, 1901, and upon all the papers and proceedings in this cause, it is

Ordered that George Deslions and others and W. C. Perry and others, claimants herein, or their respective proctors, show cause before this Court at a Stated Term thereof to be held in the United

States Court House in the City of New York on 6497
the 14th day of June, 1901, at the opening of the Court on that day, why an order should not be made directing the issue of a commission to the United States Consul at Havre, France, to take the depositions of the witnesses mentioned in the said affidavit of the said Edward K. Jones, Esq., upon written interrogatories, cross-interrogatories and the direct-interrogatories to be settled under the order of this Court, and why the trial of this proceeding should not be postponed and stayed until the execution and return of the said commission, and why the said petitioner should not have such other and further order or relief in the premises as 6498
may be just.

Let a copy of this order and of the said affidavit be served upon the proctors for the said George Deslions, *et al.* and W. C. Perry, *et al.*, this 13th day of June, 1901.

Dated New York, June 13th, 1901.

ADDISON BROWN,
U. S. District Judge.

6499

6500 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for Limitation
6501 of liability and other relief.

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

EDWARD K. JONES, being duly sworn, deposes and says:

That he is the proctor for the above-named petitioner, La Compagnie Generale Transatlantique, in this proceeding.

And deponent further deposes and says that this is a petition for limitation of liability growing out
6502 of the loss of the petitioner's steamship *"La Bourgogne"* and her pending freight, which was caused by a collision between the said steamship and the British ship *"Cromartyshire"* on the 4th day of July, 1898; that the petition for the limitation of liability was filed on the 15th day of May, 1900, and the monition upon the same was returnable on the 21st day of August, 1900; that after the return day of the said monition several persons claiming damages growing out of the loss of the said steamship, and especially one George Dealions and others, filed answers charging faults and defaults

against the said petitioner as will more particu- 6502
larly appear upon an examination of the said answers; that among other charges of fault it was alleged by the said Deslions and others that the various faults, omissions and acts of negligence charged against the petitioner were had and occurred with the privity and knowledge of the said petitioner; that thereupon the said Deslions and others pleading in that belief began a series of examinations of the various Captains of other steamships of the petitioner requiring them to produce their Log Books containing entries concerning the occurrences of their respective voyages ostensibly to show, and with the declared purpose of showing, 6504
as the said Deslions and others had alleged, that all the steamers of the said petitioner had been run habitually at an immoderate and excessive rate of speed in fog in violation of the statute in such case made and provided; that this line of examination of the Captains of the petitioner's other steamships was opposed in various ways and resisted until this Court ultimately decided by an order made in this proceeding on the 15th day of May, 1901, that such examinations and the requisition for the production of such Log Books were irrelevant and immaterial to the issues in this cause, and thereupon limited the production of the said Log Books to 6505
those of the said steamship *"La Bourgogne"* and of any other steamers commanded by her Captain within two years prior to the said collision; that in those circumstances and because of the said examinations and inquiry into entries in the Log Books of the other steamers of the petitioner, the counsel for the said petitioner deferred the issue of a commission to France, where the petitioner's witnesses reside until a decision of this Court as to the materiality and relevancy of such evidence sought to be introduced into the case by the said

6506 Deslions and others, and until the possible development of such facts as might seem to call for an answer or explanation by the officers and agents of the said petitioner in France; that no attempt was made by the said Deslions and others or by any other claimant to bring this proceeding to a hearing until the April term of this Court, for which notice of trial was served by the proctors for the Deslions *et al.* and Perry *et al.* and they only representing eight claimants out of a total of fifty-six claimants in the case; that upon the call of the Calendar of this Court at said April Term the proctors for the said Deslions, *et al.*, answered
6507 "ready," when as a matter of fact they were not ready and know that they were not ready, and could not be ready, for trial at that Term, and upon the announcement of the petitioner of its unreadiness to proceed to trial because of the facts above stated, the proctors for the said Deslions, *et al.* refused to consent to the issue of a commission, whereupon the proctor for the petitioner proposed and offered to send to France for the witnesses in behalf of the said petitioner, which was thereupon done; that notwithstanding the pretense of the proctors for the said Deslions, *et al.*, that they were ready at the commencement of the said April
6508 Term, which was on the 4th day of April, 1901, and after the announcement of the purpose of the proctor for the petitioner to send for the witnesses for the petitioner to attend the trial of the case here in person, the said proctors for the said Deslions, *et al.*, in addition other proceedings as the files and records of this court will show, thereafter obtained an order to show cause returnable an order to show cause returnable on the 22d day of April, 1901, why the petitioner should not produce upon the trial of the cause all the Log Books of all the steamers of the said petitioner navigating be-

tween New York and Havre for a period of three 6509
years prior to the said collision; that thereupon this Court took the said motion under advisement and held the same for decision until the 13th day of May, 1901; that the pendency of the said motion necessarily on account of the possibility of the petitioner being required to call witnesses to testify as to entries which might be made in the said Log Books rendered it still uncertain as to what witnesses the petitioner might require in that behalf, so that it was not until the entry of the said order, namely, the 13th day of May, 1901, that the proctor for the said petitioner was in a position to call for the necessary witnesses to be produced in be- 6510
half of the said petitioner; that thereupon the said proctor did communicate again with the Home Office of the said petitioner in Paris, France, explaining the situation and calling for such witnesses as the petitioner might be able to produce both as to the facts of the collision and as to the entries in the said Log Books and other matters of defense to the answers interposed by the said Desllons and others; that on the 4th day of June, inst., the proctor for the said petitioner received through the agency of the petitioner a communication embodying a cablegram from the Paris office of the petitioner, which communication and cablegram 6511
are as follows:

"NEW YORK, June 4th, 1901.

E. K. JONES, Esq.,
49 Wall St., City.

DEAR SIR:—

I beg to send you herewith enclosed original cable which I have just received from my Directors in Paris reading as follows:

"We would have been anxious out of defer-
"ence to the Court to send witnesses June

6512 "15th, but we find this an impossibility as "those witnesses are so scattered. We regret "it deeply."

As you know, I have written to my Directors in Paris impressing upon them the desire of the Court to have the witnesses in question in New York for the date of June 15th, but I told you, knowing by an experience of many years spent in the Home Office in Paris, how difficult it would be to get these witnesses together, part of them being men occupying important positions and having to travel often and the other part being sailors who are dispersed on voyages on the different Steamers of our Company.
6513 The total fleet of our Company includes more than sixty large Steamers, on which our sailors are constantly being shifted.

Believe me,

Yours very truly,

EUG. DE BOCARDE,

General Agent."

That deponent thereupon requested the said petitioner's Home Office in Paris to inform deponent of the earliest date possible to send the said witnesses to New York to attend the trial of this case, and on this date, to wit, the 13th day of June, 1901,
6514 the deponent received a communication from the agency of the petitioner in New York City embodying a cablegram from the Paris Office which communication and cablegram are as follows:

"NEW YORK, June 13, 1901.

E. K. JONES, Esq.,
49 Wall Street,
New York City.

DEAR SIR:—

I beg to send you herewith enclosed original cable

which I have just received from my Directors in 6515
Paris reading as follows:

"On account scattering of our steamers im-
"possible send witnesses *Bourgogne* before
"first week August."

Since my letter of June 4th last addressed to you, the contents of which I herewith confirm, I have been urging my Directors in Paris to do their utmost to gather together these witnesses, and the above cable shows what they hope to be able to do in deference to the desires of the Court.

I remain,

Yours very truly, 6516
EUG. DE BOCARME,
General Agent."

And deponent further deposes and says that he is advised and believes that the following named witnesses are material and necessary for the proof of the proper facts and of the maintenance of the case of the said petitioner, viz.: Jean Petiot, Quartermaster; Louis Corre, Helmsman; Edouard Laisle, Fourth Engineer, and the following other persons, viz.: Ives Ralle, Pierre Le Breton, Jean Calvary, Reno Denys, Ives Pierre, Desire Le Mayner, Fortune Valer, M. Depres, Jacques Duffour, Charles 6517
Fortin, Pirounoc, Oiler, Edouard L' Aine, Voisin, Pierre Valere, and Fortun Le Breton, all of whom were on board the steamship *La Bourgogne* at the time that she was lost, and can testify to the truth of said collision; that Paul Simon and Monsieur Lanes, respectively the Marine Superintendent of the petitioner at Havre, and the Chef du Equipage at St. Nazaire, the yards and docks of the petitioner, who will testify respectively as to the equipment and armament of *La Bourgogne* on the voyage upon which she was lost; and the deponent further de-

6518 poses and says that such other witnesses who have made entries in the Log Books of the said steamship *La Bourgogne* and of other steamers commanded by her Master, are also material and necessary for the proper presentation of the case of the petitioner in that behalf, and that deponent is not at present able to state the names of the said witnesses.

Deponent moves upon the foregoing facts that an order be made for the issue of a commission to the United States Consul at Havre, France, to take the depositions of the above-mentioned witnesses and such other witnesses on behalf of the petitioner as the deponent, as above stated, is unable to specifi-
6519 cally name, upon written interrogatories and cross-interrogatories to be settled under the order of this Court, and that the trial of this cause be postponed and stayed until the execution and return of the said commission.

EDWARD K. JONES.

Sworn to and subscribed before me, this 13th day of June, 1901.

FREDERICK KOPP,
Notary Public (73),
N. Y. Co.

[SEAL.]

6520 (Endorsed)—Order to Show Cause Why Commission should not Issue and Affidavit.—Filed June 15, 1901.

UNITED STATES DISTRICT COURT. 6521

In the Matter

of

The Petition of La Compagnie Generale Transatlantique, owner of the Steamship "La Bourgogne," for limitation of liability.

6522

Southern District of New York, ss.:

Robert D. Benedict, being duly sworn, deposes as follows:

That although the collection in this case occurred on July 4th, 1898, and although many suits were commenced in the Courts of the United States and of various States against the petitioner to recover damages by reason of the negligence which caused said collision, the petitioner delayed the filing of its petition herein till May 15th, 1900, when it had become apparent that the petitioner would shortly be forced into the trial of one or more of the suits 6523
which had been brought against it.

That in the petition herein it was averred that said collision was not caused by fault of the *Bourgogne* or those in charge of her navigation but was caused solely by the fault of the *Cromartyshire*, and it was also alleged that the loss, &c., caused by said collision were without the privity or knowledge of the petitioner. That in the answer of Des Lions herein which was filed on August 31st, 1900, the above allegations were denied and the charge was unequivocally made that both those in charge of the

navigation of the *Bourgogne* and the petitioner itself were chargeable with fault contributing to the collision. And since that time the petitioner's counsel and the petitioner also if that counsel did his duty, have known, hat whenever the cause came to trial it would be necessary for them to have the testimony of witnesses who were on board of the *Bourgogne,* if they intended to prove their allegations above set forth.

And deponent further says that it is of little importance in this matter what the petitioner's counsel "is advised and believes" in reference to the materiality of the witnesses named in his affidavit as having been on board of the *Bourgogne,* inasmuch as the counsel does not state in his affidavit by whom he is advised or what were the grounds of his belief. But deponent believes that such witnesses are not material and necessary witnesses for the following reasons, viz.: that on the trial of the cause in the English Admiralty Court between the petitioner and the owners of the *Cromartyshire* to recover the damages caused by the said collision, the only witnesses of all those named in the affidavit as on board the *Bourgogne* at the collision who were called by the petitioner were Louis Corre, Edouard Laisle and Ives Ralle. That Laisle testified that he was not on watch at the time of the collision, having gone off his watch about three hours before the collision, and that there was no evidence given by either of the other two witnesses, which would tend to show that the navigation of the *Bourgogne* was free from fault.

And deponent further says that the deposition of Jacques Dufour, one of said witnesses named in said affidavit, was taken in the action brought in behalf of Des Lions against the petitioner in the U. S. Circuit Court in this District which action

has been stayed by this proceeding, and said deposi- 6527
tion is accessible to the petitioner herein.

And deponent further says that inasumuch as the petitioner's counsel concedes that he knew that it was claimed that the steamers of the petitioner were habitually run at an immoderate rate of speed in fogs, he must have known that the log of each of the various steamers would furnish evidence whether or not that steamer had been so run, and the averment in his affidavit of the desire to call witnesses to explain entries in the logs involves the admission that there are entries in said logs showing excessive speed in fogs.

That when various captains of such steamers were 6528
under subpœna to produce their logs, they refused under the instruction of the petitioner's counsel to produce their logs, and that although the Court decided on the 22d day of September last that the logs should be produced, the production of such logs has still been refused, and that the manifest inference from such instruction of counsel and refusal of such logs points to a knowledge or at least an apprehension that such logs prove such usage of immoderate speed.

That it is not the fact that this Court has decided that such log books of other steamers are irrelevant and immaterial to the issues in this cause, and more- 6529
over, inasmuch as the fact, that any steamer of the petitioner had run at immoderate speed in a fog, would be proved by the entries in her log, if she was so run, it is plain that the fact that she was so run and that other steamers were so run would tend to prove that it was the usage of the steamers of the petitioner to so run.

And deponent avers that there has been abundant time since the petitioner's counsel has known that such evidence would be offered, if it could be obtained, for the petitioner to have learned which logs

of its steamers did contain entries which showed that that steamer had been so run, and to find out if any explanation of such entries existed, and by what witness, if any, such explanation could be furnished. But that there is no intimation that any diligence whatever has been exercised in this regard either by the petitioner or its counsel.

And deponent further says that the statement of petitioner's counsel in his affidavit that when this cause was called in April the claimant's proctors answered Ready "when as a matter of fact they were not ready, and knew that they were not ready, and could not be ready for trial at that term," is a statement made recklessly and without foundation, the fact being that such proctors were ready to have begun the trial of the cause on that day.

That there was nothing in the motion for the production of logs, which in the least hindered the petitioner's counsel from keeping true his statement to the Court, made in April, that he would bring his witnesses to attend the trial.

That there is nothing in the affidavit of said counsel to show that he has shown any diligence in effort to procure said witnesses, or that the petitioner has made any effort whatever to bring this cause to trial, the petitioner being apparently desirous to continue to put off the claims of the various claimants, as it has now by its various delays succeeded in doing for nearly three years.

And deponent further says that Paul Simon, the Marine Superintendent of the petitioner at Havre, was also examined in the Admiralty Court in England as to the equipment of the *Bourgogne*, but the evidence of Lannes was not then considered material for he was not called as a witness.

And deponent further says that although the answer with interrogatories attached was served on

August 31st, 1900, the petitioner by repeated delays 6533
postponed answering said interrogatories until the 15th day of March, 1901; that thereupon the cause was at once put on the calendar and noticed for trial by the claimant's proctors, and has been by them steadily urged for trial since that time.

That all the proceedings of the petitioner have been dilatory, and that its language of deference to the Court is utterly at variance with the continued course of its counsel in the cause.

That the postponement of this trial would be a hardship which ought not to be imposed upon the claimants who have already suffered very great injury at the hands of the petitioner. 6534

ROBERT D. BENEDICT.

Sworn to before me this
14th day of June, 1901.

THOS. ALEXANDER,
U. S. Commissioner.

(Endorsed)—June 14, 1901.—Filed June 15, 1901.

6535

6536 U. S. DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
6537 of liability and other relief.

Southern District of New York, ss.:

A. GORDON MURRAY, showing cause as required, being duly sworn, deposes and says, that he is proctor and counsel for W. C. Perry, administrator of the estates of Kate M. Perry, Sadie Perry and Florence Perry, deceased, for John Perry, father and next of kin of Katherine Perry and Albert Perry, deceased, and for Pauline Henuy, administratrix of the esate of Juliette Cicot, deceased,
6538 claimants herein, and that he has interposed an answer to the petition in this proceeding, in behalf of the aforesaid damage claimants.

That before the filing of the petition herein the said claimants had all brought actions at law in various jurisdictions to recover for losses suffered and were all named in the petition and said suits have all been stayed by injunction from this Court. That the petition was filed on the 15th day of May, 1900, the claims filed on or about the 2d day of

August, 1900, and the answer duly interposed on 6539
the 1st day of September, 1900.

That after the filing of the petition it was sought to elicit by examination *de bene esse* from the captains of the petitioner's steamers information as to the regulations imposed upon them by the petitioner with regard to speed in fog in running their respective vessels and subpœnas were issued to such captains which required them to bring their respective logs. From time to time various captains appeared, but under instructions from the petitioner's proctor refused to produce their logs for examination until on the 4th day of October, 1900, an order of this Court was made upon a motion made by 6540
deponent to compel the production of said logs; that said logs must be produced; that the same were material in this proceeding and that a proctor had no right to instruct a witness not to answer questions propounded to him.

Notwithstanding such order said captains, to wit, Capt. Fajolle, Capt. Santilli and Capt. Poirot, refused, and have persistently refused and neglected to produce their respective log books which they were severally subpœnaed to produce.

That motions were made to punish the captains for contempt, but upon it appearing that they had severally taken the said logs out of the jurisdiction 6541
and wilfully refused to bring them hither again, a motion was made and argued April 17th, 1901, on behalf of these and other claimants, to compel the petitioner to produce certain log books upon the trial of this cause. An order on said motion was made and entered on the 17th day of May, 1901, that the logs of *La Bourgogne* for a period of two years prior to July 4th, 1898, be produced, and the logs of any steamer of which the *Bourgogne's* captain was commander. Ample time has thus been given the peti-

6542 tioner to bring hither said logs, in view of the fact of petitioner's exceptional facilities for so doing, and petitioner's proctor has known for the last year what was the nature of the claimant's defenses to the petition, and it is his fault and neglect if he has not taken the proper steps to produce upon the trial the witnesses which he deems necessary to his case. Furthermore, of the persons named in the affidavit of Edward K. Jones, upon which the order to show cause returnable here this day is based, Simon, Laisle, Corre and Ralle were elaborately examined by counsel for La Compagnie Generale Transatlantique, in a suit brought by the owners of the
6543 ship *Cromartyshire*, growing out of the collision with said company's steamer *La Bourgogne*, and which collision is the cause of this proceeding for limitation of liability. Jacques Duffour has been examined *de bene esse* in New York, and his testimoney is available herein, and of the others named it is hardly open to doubt that Mr. Pike had them in mind when he said in the High Court of Justice in England, that he had several other survivors who were aboard, but they could add nothing as they only took part in rescue. (English Testimony, pg. .)

Deponent further says that in view of the palpable neglect of the petitioner or its counsel of the long delay already entailed on these claimants and
6544 of the rule of this Court with respect to the issuance of commissions (Rule 47), this motion should be denied.

Deponent submits that the affidavit does not specify the facts sought to be proved, nor the shortest time within which the testimony may be taken and the commission returned, and further that a proper case for the issuance of a commission and stay of proceedings has not been shown, inasmuch as the facts stated point conclusively to the negli-

gence and obstruction practiced by the petitioner's 6545
proctor from the commencement of this proceeding.

Deponent, therefore, strenuously opposes the application for a commission and a stay of proceedings and asks that the case proceed in its order forthwith.

A. GORDON MURRAY.

Sworn to before me this
14th day of June, 1901.
THOS. ALEXANDER,
U. S. Comr.

(Endorsed)—Affidavit in Opposition to Order to 6546
Show Cause for Commission.—Filed June 15, 1901.

6547

6548 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

6549

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 15th day of June, 1901, denying petitioner's motion for leave to issue commission to take depositions in France.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from
6550 the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, June 15th, 1901.

Yours, etc.,

EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to Order of June 15th, 1901.—Filed July 29, 1904.

UNITED STATES DISTRICT COURT, 6551

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

6552

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 12th day of July, 1900, modifying injunction so as to permit opening of Henderson's deposition in Circuit Court, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from 6553
the final decree in this cause, as provided by the 52nd rule in admiralty prescribed by the Supreme Court.

Dated New York, July 12th, 1900.

Yours, etc.,

EDWARD K. JONES,

Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,

Clerk.

(Endorsed)—Exception on Order of July 12, 1900. —Filed July 29, 1904.

6554 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

6555

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 14th day of July, 1900, directing the issue of a commission to take the testimony of Oscar Helmore Henderson.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from
6556 the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, July 14th, 1900.

Yours, etc.,

EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to Order of July 14th, 1900.—Filed July 29, 1904.

DISTRICT COURT OF THE UNITED STATES, 6557

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

6558

The above-named petitioner hereby excepts to the order of this Court made and entered herein on the 16th day of October, 1900, as to the examination of Sauveur Santelli, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court. 6559

Dated New York, Oct. 16th, 1900.

Yours, etc.,

EDWARD K. JONES,

Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,

Clerk.

(Endorsed)—Exception to Order of October 16th, 1900.—Filed Jul. 29, 1904.

6560 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6561

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 25th day of October, 1900, directing opening of Henderson's deposition, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on appeal from the final decree in this cause, as provided by the 6562 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, Oct. 25th, 1900.

Yours, etc.,
EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to order of October 25th, 1900.—Filed July 29, 1904.

UNITED STATES DISTRICT COURT, 6563

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6564

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 25th day of October, 1900, denying petitioner's motion to suppress deposition of Oscar H. Henderson.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on appeal from the final decree in this cause, as provided by the 6565
52d rule in admiralty prescribed by the Supreme Court.

Dated New York, Oct. 25th, 1900.

Yours, etc.,
EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to order of October 25, 1900.—Filed July 29, 1904.

2194

6566 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6567

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 27th day of October, 1900, directing the opening of the deposition of Oscar H. Henderson.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on appeal from the final decree in this cause, as pro-
6568 vided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, Oct. 27th, 1900.

Yours, etc.,
EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to order of October 27th, 1900.—Filed July 29, 1904.

UNITED STATES DISTRICT COURT, 6569

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6570

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 3d day of November, 1900, in so far as the same directs petitioner to answer certain interrogatories annexed to answer of Deslions, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on appeal from the final decree in this cause, as pro- 6571
vided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, Nov. 3d, 1900.

Yours, etc.,

EDWARD K. JONES,

Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,

Clerk.

(Endorsed)—Exception to Order of November 3d, 1900.—Filed Jul. 29, 1904.

6572 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6573

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 12th day of November, 1900, in so far as it directs the petitioner to answer certain interrogatories annexed to the answer of the claimants Perry *et al.*

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on
6574 appeal from the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, Nov. 12th, 1900.

Yours, etc.,
EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to Order of November 12, 1900.—Filed Jul. 29, 1904.

UNITED STATES DISTRICT COURT, 6575

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6576

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 15th day of May, 1901, directing petitioner to produce log books, etc.

And the Clerk of this Court is hereby requested to include and certify the notice of motion upon which said order is based, and the exhibits and papers thereto annexed, together with the said order, and this exception to it, in making up the record to be transmitted to the United States Circuit Court of Appeals for the Second Circuit on appeal from the final decree in this cause, as pro- 6577
vided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, May 15th, 1901.

Yours, etc.,
EDWARD K. JONES,
Proctor for Petitioner.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to Order of May 15th, 1901.—Filed Jul. 29, 1904.

6578 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6579

The above-named petitioner hereby excepts to the order of this Court, made and entered herein on the 30th day of June, 1904, overruling the petitioner's exceptions to the Commissioner's report herein, and confirming the Commissioner's said report, except in so far as the said order confirms the report of the said Commissioner against the claim of the S. S. White Dental Company.

And the Clerk of this Court is hereby requested to include and certify the said Commissioner's report, the testimony taken before the Commissioner, the petitioner's exceptions thereto, together with
6580 said order and this exception to it, in making up the report to be transmitted to the United States Circuit Court of Appeals for the Second Circuit, on appeal from the final decree in this cause, as provided by the 52d rule in admiralty prescribed by the Supreme Court.

Dated New York, July 25th, 1904.

EDWARD K. JONES,
Proctor for Petitioner.

THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to order of June 30th, 1904.—Filed Jul. 29, 1904.

UNITED STATES DISTRICT COURT, 6581

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability.

6582

The above-named petitioner hereby excepts to the order of the Court dated July 11th, 1904, and entered herein on the 19th day of July, 1904, in so far as the same (1) makes any awards to any of the respondents and claimants herein named (2) as to the manner of awarding costs in the cause; and (3) to the form thereof, and especially to the inclusion therein of those matters and things which are embraced and included in the decree of this Court, made and entered on the 22d day of March, 1902.

Yours, etc., 6583

EDWARD K. JONES,
Proctor for Petitioner.

Dated New York, July 19, 1904.

To Hon. THOMAS ALEXANDER,
Clerk.

(Endorsed)—Exception to Order of July 19th, 1904.—Filed Jul. 29, 1904.

6584 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation
6585 of liability and other relief.

Cross-interrogatories to be propounded to Oscar Helmore Henderson, in behalf of the petitioner, pursuant to order of this Court of October 25th, 1900:

FIRST.—What is the length, breadth of beam, depth of hold and tonnage of the *Cromartyshire?*

SECOND.—How many officers did the *Cromartyshire* have at the time of the collision with the *Bourgogne?* Please state the name of each.

6586

THIRD.—What was the total number of able seamen on board the *Cromartyshire* at the time of the collision, and state as far as you can their names?

FOURTH.—In giving the total number of able seamen on board the *Cromartyshire* state whether you include the cook, steward, carpenter and sailmaker.

FIFTH.—What was the total number of your officers and crew? What watch was on deck from

the time you heard *La Bourgogne's* fog-whistle to 6587
the time of collision? How many were they and what were their names?

SIXTH.—State whether the *Cromartyshire* had a regular, trained boatswain at the time of the collision, or did you select one of the crew for that position?

SEVENTH.—Did you not require the ship's carpenter and the sailmaker to perform duty as seamen and put them in the watch, and was this not because the ship was short-handed of competent seamen? 6588

EIGHTH.—Who was on the lookout just before and at the time of the collision? Was it the same man who was engaged in sounding the fog-horn? What was his name? How long had he been on duty?

NINTH.—Why did you not station a lookout forward in addition to the man who was blowing the fog-horn on the morning of the collision?

TENTH.—After you heard the whistle or siren of the *Bourgogne* did you not have some difficulty 6589
with the man who was blowing the horn as to the manner in which it was being blown? State what occurred in that respect.

ELEVENTH.—Did you not use profane and violent language in speaking of the manner in which the fog-horn was being blown by the man forward, and as a matter of fact was not the fog-horn being blown in an improper manner, both before and after the whistle of the *Bourgogne* was heard?

6590 TWELFTH.—Do you ever indulge in intoxicating liquors? Had you not been drinking heavily the night before the collision, and were you not still under the influence of liquor when you came on deck and heard the whistle of the *"Bourgogne"?*

THIRTEENTH.—During the interval between your first hearing of the whistle or siren of the *"Bourgogne"* and the collision did the sound bear in the same direction or did it vary in any way, and, if so, in what particular?

FOURTEENTH.—After you heard the fog-whistle
6591 of *"La Bourgogne"* sufficiently long to fear a collision, what steps did you take by shortening sail, or otherwise, to avoid a collision? Did you place any man on the yards to back them, if necessary? If so, who did you send aloft for that purpose? What were their names.

FIFTEENTH.—For what reason did you omit to back your yards, or to do anything to avoid the collision after you had located the sound of *"La Bourgogne's"* whistle?

SIXTEENTH.—Was there any difficulty about
6592 your keeping off, or luffing, and thus avoid the collision? Explain why you did not adopt this precaution.

SEVENTEENTH.—Did you give any order to the man at the wheel, or was the wheel in any way changed from the time you heard *"La Bourgogne's"* whistle until the collision? If so, what change or helm did you make and why did you make it.

EIGHTEENTH.—Do you not know that it is the duty of a sailing-ship to have seamen posted aloft

ready to back the yards when there is danger of col- 6593
lision? Why did you omit this precaution when you heard "*La Bourgogne's*" whistle?

NINTEENTH.—Do you know that the Captain and all the officers and men on duty on the "*Bourgogne*" at the time of the collision with the "*Cromartyshire*" were drowned or lost, and did you know that fact when you gave your testimony in this case? You learned this fact shortly after the collision, did you not, and before any investigation, inquiry or trial with respect to the collision took place?

TWENTIETH.—What was the name of the look- 6594
out of the "*Cromartyshire*"? Where is he now and did he leave the "*Cromartyshire*"?

TWENTY-FIRST.—What was the name of the man at the wheel? Where is he now and when did he leave the "*Cromartyshire*"?

TWENTY-SECOND.—What became of the fog-horn of the "*Cromartyshire*" on board at the time of the collision? Was it not taken off at Halifax for repairs and repaired there? What was its condition as to efficiency of sound at the time and shortly before the collision? State the name of the person or 6595
establishment who made the repairs.

TWENTY-THIRD.—Have you made any statement or declaration with respect to your testimony or the effect of your testimony in the case of Thomas Law, *et al.*, against La Compagnie Generale Translantique, which was tried before Mr. Justice Barnes in the Probate, Divorce and Admiralty Division in London in January, 1899? If so, state what declaration you made in that particular.

6596 TWENTY-FOURTH.—Had you been drinking before you went on the witness stand at that trial, and did you take several drinks after you left the witness stand and closed your testimony?

TWENTY-FIFTH.—State whether or not after giving your testimony in the above-mentioned case you went to a drinking saloon opposite the Law Courts and there stated that "you had done up that d——d Frenchman and left no one on her to tell tales," or words to that effect? If the above is not a correct statement of what you said on that occasion, state what you did say. You knew then,
6597 did you not, that there was no one living to contradict the testimony you gave on the witness stand?

TWENTY-SIXTH.—At whose instance and why have you given your deposition in behalf of the claimants in this case, and have you been paid or promised compensation or reward for your evidence in this case?

TWENTY-SEVENTH.—What are the usual routes of steamers between New York and Havre? Have you ever been Master of a steamer so plying, and,
6598 if so, what was her name.

TWENTY-EIGHTH.—Had you seen before your examination on this commission, a copy of the stenographer's minutes of your testimony in the case of Thomas Law & Co. *vs.* La Compagnie Generale Transatlantique in the Probate, Divorce and Admiralty Division of the High Court of Justice of England?

TWENTY-NINTH.—Have you had any correspondence with the attorneys for the plaintiff in this case

respecting your testimony herein, or have you received instructions from the owners to appear and testify in these cases? If you say you have had such correspondence, annex the whole of the same to your deposition, and if you have been instructed to testify in this case, state what such instructions were, and if in writing, annex them to this communication. 6599

THIRTIETH.—Look at the annexed transcript of what appears to be the official shorthand-writer's notes of your evidence in the case of Thomas Law & Co. *vs.* La Compagnie Generale Transatlantique in the Probate, Divorce and Admiralty Division of the High Court of Justice, and state whether or not the same is a true statement of your testimony in that case. Do you still affirm the statements that you made in answer to the questions and cross-questions that were propounded to you upon that trial as appearing in the said shorthand-writer's notes? If you say that the same is not a correct report of your testimony upon that trial, state in what particulars the same is incorrect. 6600

(The Commissioner is requested to mark the transcript referred to for identification.)

THIRTY-FIRST.—Do you know any other matter or thing of advantage to the defendant on the trial of the above-entitled action? If so, please state the same as if you were specially interrogated thereunto. 6601

JONES & GOVIN,
Proctors for Petitioner.

6602 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and for other relief.

6603

To LA COMPAGNIE GENERALE TRANSATLANTIQUE and to EDWARD K. JONES, its Proctor:

You are hereby notified that John Perry, father and next of kin of Katherine Perry and Albert Perry, deceased, claimant in the above-entitled cause, intends to and hereby does appeal from the final decree of the District Court of the United States in and for the Southern District of New York, entered in the above entitled action on the twenty-second day of March, 1903, to the United States Circuit Court of Appeals for the Second Circuit.

6604

Dated New York, the 11th day of March, 1903.

A. GORDON MURRAY,
Proctor for Claimant.

(Endorsed)—Notice of appeal—Filed March 14, 1903.

UNITED STATES DISTRICT COURT, 6605

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and for other relief. 6606

TO LA COMPAGNIE GENERALE TRANSATLANTIQUE and to EDWARD K. JONES, its Proctor:

You are hereby notified that Pauline Henuy, as administratrix of the estate of Juliette Cicot, deceased, claimant in the above-entitled cause, intends to and hereby does appeal from the final decree of the District Court of the United States in and for the Southern District of New York, entered in the above-entitled action on the twenty-second day of March, 1903, to the United States Circuit Court of Appeals for the Second Circuit. 6607

Dated New York, the 11 day of March, 1903.

A. GORDON MURRAY,
Proctor for Claimant.

(Endorsed)—Notice of appeal—Filed March 14, 1903.

6608 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
6609 BOURGOGNE," for limitation of liability and for other relief.

TO LA COMPAGNIE GENERALE TRANSATLANTIQUE and to EDWARD K. JONES, its Proctor:

You are hereby notified that W. C. Perry, as administrator of the estate of Kate M. Perry, deceased; and of the estate of Florence Perry, deceased; and of the estate of Sadie Perry, deceased, claimant in the above-entitled cause, intends to and hereby does appeal from the final decree of the Dis-
6610 trict Court of the United States in and for the Southern District of New York, entered in the above-entitled action on the twenty-second day of March, 1903, to the United States Circuit Court of Appeals for the Second District.

Dated New York, the 11 day of March, 1903.

A. GORDON MURRAY,
Proctor for Claimant.

(Endorsed)—Notice of appeal—Filed March 14, 1903.

UNITED STATES CIRCUIT COURT OF APPEALS, 6611

SECOND CIRCUIT.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability. 6612

TO THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petition of the above-named appellant, La Campagnie Generale Transatlantique, respectfully shows to this Court:

FIRST.—That on or about the 15th day of May, 1900, your petitioner herein exhibited its libel and petition in the District Court of the United States for the Southern District of New York, praying that for the reasons set forth in said libel and petition the said Circuit Court make an order appointing a Trustee to whom your petitioner might transfer its interest in the steamship *La Bourgogne*, mentioned in said libel and petition, and her pending freight; that the said Court also appoint a commissioner to receive proof of claims; that the said Court issue a monition for all persons claiming damages by reason of any loss, damage or injury done, occasioned, or incurred by reason of the collision in the said libel and petition set forth citing them to appear at or before a time named in said 6613

6614 writ and make proof of their respective claims; that the said Court issue its injunction restraining the prosecution of all actions, suits, legal proceedings, of any kind arising out of said collision and that the Court adjudge the petitioner not liable for any demands or claims whatsoever in consequence of said collision or that if such liability be established, then that the petitioner be discharged therefrom.

SECOND.—That thereupon, pursuant to an order of this Court, your petitioner transferred to the Trustee named therein its interest in the steam-
6615 ship *La Bourgogne* and her pending freight and thereupon an injunction was issued against all persons having any claims arising out of said collision and a monition was issued directing all persons having any claims arising out of said collision to file the same at a day stated therein; with the Commissioner named in said monition.

That thereafter certain persons filed claims with the said Commissioner.

THIRD.—That thereafter certain persons filed answers in said proceeding praying that the said libel and petition might be dismissed as by reference to
6616 said answers will more fully appear.

FOURTH.—That thereafter the said case came on to be heard before the Honorable William K. Townsend, sitting as a Judge of the said District Court, upon the pleadings and proofs adduced by the respective parties, and the said Judge having advised thereon did thereafter, on or about the 22nd day of March, 1902, render and make a decree granting the prayer of the petitioner for a limitation of its liability for all losses arising out of the collision mentioned in the said petition; disallowing all

claims for loss of life; adjudging the said steam- 6617
ship *La Bourgogne* in fault for the collision; appointing a Commissioner to take testimony as to the amount of all claims not excluded, and directing the said Commissioner to report the same with his opinion thereon, and adjudging that the petitioner had duly surrendered its interest in the steamship *La Bourgogne* and her pending freight.

FIFTH.—The said Commissioner thereafter filed his report pursuant to the last-named decree, making awards to certain claimants, to which report the petitioner duly filed exceptions which were afterward argued by counsel, and subsequently over- 6618
ruled by the Court, and on the 11th day of July, 1904, the said Court entered its decree in the cause adjudging that certain claimants were entitled to recover certain sums of money with interest as will more fully appear by said decree.

SIXTH.—That on or about the 10th day of January, 1905, the appellant duly made and served a notice of appeal from the aforesaid decree to this Court and also at the same time duly made and filed a stipulation for costs as required by the rules and practice in such case made and provided.

SEVENTH.—That thereafter and on the 10th day 6619
of January, 1905, this appellant duly filed its assignment of errors herein.

EIGHTH.—And this appellant is advised and believes and accordingly insists that the said decree is erroneous inasmuch as it orders, adjudges and decrees:

(1). That the steamer *La Bourgogne* referred to in the libel and petition herein was in fault for the collision set forth in said libel and petition herein,

for proceeding at an immoderate rate of speed in a fog, contrary to law;

(2). That certain claimants are entitled to recover the sums referred to in said decree;

(3). That the costs of the proceeding be divided;

(4). That the petitioner pay the costs of each of the parties appearing herein who has commenced a proceeding against the petitioner, and which proceeding was stated by temporary injunction issued herein as a condition of enjoining the further prosecution of such proceedings.

And this appellant for these and divers other reasons appeals from the said decree in the particulars mentioned to the United States Court of Appeals for the Second Circuit, and on said appeal intends to seek a new decision of the facts and to have the said case heard upon the pleadings and proofs taken in the District Court and upon other proofs to be introduced in said Circuit Court of Appeals.

And this appellant prays that the records and proceedings of the District Court may be returned to the United States Court of Appeals for the Second Circuit, and that the said decree may be reversed in so far as the same is objectionable to this appellant with costs, or that such other decree thereon may be made as to the said Circuit Court of Appeals may seem just, and that the appellant have such other and further relief in the premises as it may be entitled to receive.

Dated, New York, January 10th, 1905.

EDWARD K. JONES,
Proctor for Appellant.

The foregoing appeal is hereby allowed.

E. H. LACOMBE
United States Judge.

(Endorsed)—Petition for Appeal.—Filed Jany. 10, 1905.

Notice of Appeal of La Compagnie Generale Transatlantique. 6623

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for Limitation of Liability and other relief. 6624

SIRS:

Please take notice that the above-named petitioner hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the decree of this Court entered in the above-entitled proceeding on the 11th day of July, 1904, in so far as said decree provides as follows: 6625

FIRST.—That the steamer *La Bourgogne* referred to in the libel and petition herein was in fault for the collision set forth in said libel and petition herein, for proceeding at an immoderate rate of speed in a fog, contrary to law.

SECOND.—That the petitioner is liable for the damages caused by the said collision to each of the

6626 claimants whose claims have been reported upon by the report of the Commissioner, referred to in said decree, as confirmed in the amounts so reported.

THIRD.—That the petitioner is liable to the several claimants in the above-entitled proceeding as follows:

To Pauline Henuy, as administratrix of Juliette Cicot, for Two thousand eight hundred and two dollars, with interest from July 4th, 1898, to the date of said decree, amounting in all to the sum of Three thousand eight hundred and ten and 72/100

6627 dollars.

To Henry Hyer Knowles, administrator of Gertrude Lalla Rookh Knowles, for Two thousand dollars, with interest from July 4th, 1898, to the date of said decree, amounting in all to the sum of Twenty-seven hundred and twenty dollars.

To William C. Perry, as administrator of Kate M. Perry, for the sum of Five thousand two hundred and seventy-seven and 50/100 dollars, with interest from the 4th day of July, 1898, to the date of said decree, amounting in all to the sum of Seven thousand one hundred and seventy-seven and 40/100 dollars;

6628 To William C. Perry, as administrator of Florence Perry, for the sum of One thousand and fifty dollars, with interest from the 4th of July, 1898, to the date of said decree, amounting in all to One thousand four hundred and twenty-eight dollars;

To William C. Perry, as administrator of Sadie Perry, for the sum of One thousand and fifty dollars, with interest from the 4th of July, 1898, amounting in all to the sum of One thousand four hundred and twenty-eight dollars;

To John Perry, as next of kin of Katherine Perry and Albert Perry, for the sum of Three hundred and fifty dollars, with interest from July 4th, 1898, amounting in all to Four hundred and seventy-six dollars; 6629

To Lewis Delfonti, for the sum of Four hundred and thirty-two dollars, with interest from July 4th, 1898, to the date of said decree, amounting in all to Six hundred and seven and 52/100 dollars;

To Henri Cirri, for the sum of One thousand and eighteen dollars, with interest from July 4th, 1898, to the date of said decree, amounting in all to One thousand three hundred and eighty-four and 48/100 dollars; 6630

To George Deslions, for Twenty-five thousand dollars, with interest from July 4th, 1898, to the date of said decree, amounting in all to Thirty-three thousand nine hundred and eighty dollars.

FOURTH.—That the costs in the above-entitled proceeding be divided and offset in the manner directed by said decree.

FIFTH.—That the petitioner pay the costs of each of the parties appearing herein who has commenced a proceeding against the petitioner, and which proceeding was stayed by the temporary injunction issued herein, as a condition of enjoining the further prosecution of such proceedings. 6631

Dated New York City, January 9th, 1905.

EDWARD K. JONES,
Proctor for Appellant,
La Compagnie Generale Transatlantique.

6632 To THOMAS ALEXANDER, Esq.,
Clerk.
Messrs. BENEDICT & BENEDICT,
Proctors for Claimants,
George Deslions and others.
A. GORDON MURRAY, Esq.,
Proctor for Claimants,
Pauline Henuy and others.
Messrs. ALEXANDER & COLBY,
Proctors for Claimant,
Henry Hyer Knowles.
Messrs. BULLOWA & BULLOWA,
Proctors for Claimant,
6633 Louis Delfonti and others.
WILLIAM H. BUTTON, Esq.,
HAROLD BINNEY, Esq.,
Messrs. KENNESON, CRAIN, EMLEY & RUBINO,
G. F. WEIDERHOLD, Esq.,
MORRIS PUTNAM STEVENS, Esq.,
FRANK L. ECKERSON, Esq.,
Messrs. TOWNSEND & MANN,
JUDSON G. WELLS, Esq.,
Messrs. GEORGE SANDS & E. W. POWERS,
WILLIAM E. PAGE, Esq.,
Messrs. WILBUR & LUDLOW,
Messrs. HARRISON, SEASONGOOD & EDWARDS,
E. A. O'SULLIVAN, Esq.,
6634 Proctor for various claimants herein.

And all others who might have an interest on this appeal.

(Endorsed)—Notice of Appeal.—Filed Jany. 10/05.

UNITED STATES CIRCUIT COURT OF APPEALS

6635

FOR THE SECOND CIRCUIT.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability and other relief.

6636

United States of America, ss:

By the Honorable E. HENRY LACOMBE, one of the Judges of the United States Circuit Court of Appeals for the Second Circuit:

To Georgie Deslions and others, claimants herein, and all other persons who might have an interest in this appeal.

Whereas, the above-named La Compagnie Generale Transatlantique, has lately appealed to the United States Circuit Court of Appeals for the Second Circuit, from a decree lately rendered by the District Court of the United States for the Southern District of New York, and has filed the security required by law; 6637

Therefore, you are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, at the Term of said Court, to be held at the City of New York, on the 9th day of February, 1905, to show cause, if any such there be, why the decree in the said appeal mentioned should not be corrected and

6638 speedy justice should not be done to the parties in that behalf.

Given under my hand, at the City of New York, on the tenth day of January, in the year one thousand nine hundred and five.

E. H. LACOMBE,
United States Judge.

(Endorsed)—Citation.—Filed Jany. 10, '05.

6639 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability and other relief.

6640

The appellant, La Compagnie Generale Transatlantique, herein, hereby assigns error in the decree of the District Court of the United States for the Southern District of New York herein, as follows:

FIRST.—The said District Court erred in holding the appellant's steamer, *La Bourgogne*, in fault for the collision mentioned in the libel and petition herein.

SECOND.—That said District Court erred in not holding the ship *Cromartyshire* solely in fault for the said collision. 6641

THIRD.—The said District Court erred in not exempting the appellant from all liability for any loss arising out of the collision set forth in the libel and petition herein.

FOURTH.—The said District Court erred in making any award to any of the claimants herein, and that it overruled the exceptions of the appellant to the report of the Commissioner herein.

6642

FIFTH.—The said District Court erred in allowing the claimants herein any costs of the proceedings herein and directing an offset thereof.

SIXTH.—The said District Court erred in directing the appellant to pay the costs of each of the parties appearing herein who has commenced a proceeding against the petitioner, and which proceeding was stayed by the temporary injunction issued herein, as a condition of enjoining the further prosecution of such proceedings.

SEVENTH.—That the District Court erred in other particulars to be shown on the argument of the appeal herein. 6643

Dated New York, January 10th, 1905.

EDWARD K. JONES,
Proctor for Appellant.

(Endorsed)—Assignment of Error.

6644 UNITED STATES OF AMERICA,
Southern District of New York, } ss:

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, as owner of the steamship "LA BOURGOGNE," for limitation of liability,

6645 Petitioner-Appellant,

GEORGE DESLIONS, W. C. PERRY as administrator, PAULINE HENUY as administratrix, HENRY HYER KNOWLES as administrator, LOUIS DELFONTI, HENRY CERRI and JOSEPHINE CHANUT,

Claimants-Appellees.

6646 I, THOMAS ALEXANDER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause made up pursuant to the directions of the United States Circuit Court of Appeals for the Second Circuit.

In testimony whereof, I have caused the seal of 6647
the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 7th day of February, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and twenty-ninth.

THOS. ALEXANDER,
Clerk.

[SEAL.]

REPUBLIQUE FRANCAISE, 6648

LAW OF THE 24TH OF JUNE, 1883,

concerning the maritime postal service: 1, between Havre and New York; 2, between France, the Antilles and Mexico.

(Promulgated by the Journal Official, the 21st of June, 1883.)

(Extract.)

CONCERNING THE LINE FROM HAVRE TO NEW YORK. 6649

The Senate and the Chambre of Deputies have adopted,

The President of the Republic promulgates the law, of which the following is the tenor:

Art. 1. The Minister des Postes et des Telegraphes is authorized to let by contract for the period of 15 years, to begin on the 22d day of July, 1885, the carrying of mails between New York, the Antilles and Mexico.

Nevertheless, before the letting, the Minister des 6650
Postes et des Telegraphes shall have the option of dating the opening of the new service upon the 22d of July, 1886.

In this case the minister is authorized to take the necessary steps to secure a service under conditions which shall not exceed those of the contract now existing.

The letting shall be done in two parts, to wit.:

Part 1. The service between Havre and New York.

6651 Part 2. The service between the Antilles and Mexico.

Art. 2. The services shall include:

1. A weekly line from Havre to New York.

* * * * * * *

Art. 3. No one shall be admitted to compete at the letting if he has not previously been accepted by a commission which shall be instituted for that purpose by decree.

Art. 4. During the ten days which shall follow
6652 the letting there shall be deposited offers of reduction upon the price resulting from the letting of each one of the parts separately. This reduction shall be at least of 5 per cent.

The re-letting shall be instituted for each one of the parts separately between the first purchaser and the bidder or bidders of offers of reduction, provided that these last, prior to their offers, have taken part in the first letting.

Art. 5. The steamers to be employed in the service between Havre and New York shall maintain a mean annual speed of at least 15 knots an hour at
6653 the ordinary rate, and furnish upon trial a minimum speed of 17½ knots, with the privilege of forced draught upon the trials.

They shall have a burden of 5,000 tons displacement at the minimum.

The number and the distribution of water-tight partitions ought to be such that any compartment being filled with water, the ship would continue to float in calm water.

Art. 6. In the case that the mean annual speed fixed in the preceding article be surpassed, there shall be awarded to the contractor a supplementary

premium fixed at the rate of twelve (12) francs a ton gross gage and per tenth of a knot of increase in speed above the required rate. 6654

In any case, the amount of the supplementary premium shall not surpass one million two hundred thousand francs (1,200,000f.) a year.

* * * * * * *

Art. 8. Every new steamer destined to be placed in service upon the line indicated in the first article must have been constructed in ship yards situated in France.

Art. 9. The other conditions of operation shall be determined by the specifications. 6655

Art. 10. In consideration of the subsidy accorded by the State it is not permitted to members of the Chamber of Deputies and of the Senate, under the penalty of forfeiting their seats, to take part in the board of directors or in the superintendence of the company to whom the subsidy is granted.

The present law considered and adopted by the Senate and by the Chamber of Deputies shall be executed as the law of the State.

Done at Paris, the 24th day of June, 1883.

JULES GREVY. 6626

By the President of the Republic:

The Minister des Postes et des Telegraphes,
Ad. Cochery.

The Minister of Finance,
P. Tirard.

6657 MINISTÈRE
DES POSTES ET DES TELEGRAPHES

SPECIFICATIONS
FOR THE OPERATION OF
THE MARITIME POSTAL SERVICE
BETWEEN
HAVRE AND NEW YORK.

CHAPTER FIRST.

6658 ## ITINERARY.

ARTICLE FIRST.

The service to be performed comprises a weekly line from Havre to New York, that is, 52 voyages, going and returning, a year.

The distance to be covered is 3,130 marine miles at each passage and 6,260 marine miles at each voyage going and returning. The annual total distance is three hundred and twenty-five thousand five hundred and twenty (325,520) marine miles.

6659 The Minister des Postes et des Telegraphes shall have the option of establishing the places of touching and of increasing the number of ordinary services upon the line above mentioned.

The price to be paid or deducted per marine mile, added to the present distance or deducted from this distance, shall be the average rate by marine mile arising from the letting.

Art. 2.

The State denies itself the option of subsidizing any particular service from any of the ports of

France upon a line already taken by the contractor. 6660
Nevertheless, this interdiction shall not apply either to the prolonging of the line already let nor to its extension in other directions.

Art. 3.

The contractor engages to transport gratuitously all of the mails upon the line from Havre to New York as well as upon any line, be it a parallel or prolongation or a branch, which he may add of his own will to the service which is the subject of the present purchase, and during all of the time that he should maintain these lines. 6661

He is bound, furthermore, to transport gratuitously all gold, silver and copper coins for the use of the State, and to undertake the carrying of postal packages under the conditions fixed by the laws of the 3rd of March and 25th of July, 1881.

Art. 4.

The Minister, after having consulted the contractor, shall fix the days and hours of departure from the termini.

He shall regulate also the time of detension at the ports, having regard to the needs of the service for the mails, the passengers and the merchandise. 6662

Art. 5.

The departure of the steamships from France shall not take place before the arrival of the mail from Paris.

Nevertheless, the delay which may result from this circumstance, and of which the cause ought to be mentioned upon the log of the vessel by the Commissioner of the Government shall not exceed twelve hours without the consent of the contractor.

6663 The contractor shall not have a claim for any indemnity on account of this delay.

Art. 6.

The steamers shall not, unless from an exceptional modification of service authorized by the Minister, touch a port or stop at other points than those designated by these Specifications, or fixed by the Itinerary approved by the Minister.

If the steamers find themselves constrained, on account of bad weather or other causes beyond their power, to stop at any other point, the fact of vis
6664 major should be stated in a minute drawn up in the customary form, of which a copy shall be given to the postal agent, or there being no postal agent, to the Commissioner of the Government.

In the absence of a postal agent, if the delay takes place in a foreign port, the minute should be certified by the Consul of France.

Art. 7.

It is prohibited the Contractor to embark or discharge passengers or merchandise at other places than at the stipulated ports of stopping.

6665

CHAPTER SECOND.

SECURITY.

Art. 8.

For the guaranty of the good execution of the services which are confided to him, the contractor shall pay within eight days, which shall follow the notification given to him, by a simple letter or by a non-judicial act, at his expense, of the approbation of this agreement by the Minister des Postes

et des Telegraphes, a security in the sum of one million (1,000,000 fr.), either in money or in bonds at 4 1-2 per cent. or 3 per cent. calculated according to the decree of the 18th of Nov., 1882. 6666

If the security is furnished in money, it ought to be paid into la Caisse des depots et consignations. After the depositor shall have qualified and caused an entry to be made upon the special register of this caisse, that the payment was made as a security, there shall be delivered to him, by the Caissier General of the Caisse des depots, a declaration which shall serve him as a receipt.

If the security is furnished in bonds, there shall be furnished from the hands of the judicial agent of the Treasury, before whom the contractor or his bail shall be obliged to pass, an act which shall specify the deposit in his hands as a guaranty of the titles of the bonds with the encumbrance by special arrangement for the guaranty of the obligations contracted. There shall be delivered a personal memorandum to the owner of the bonds to enable him to realize upon the income. 6667

Art. 9.

The security shall be answerable for claims to be brought against the contractor and generally for the recovery of all damages determined because of violations of the conditions of the agreement without prejudice to the means open to law to the administration of the security should prove insufficient. 6668

Nevertheless, the security shall be returned, in whole or in part, at the time when, the operation being in full activity, the contractor shall prove the possession of a naval outfit, the value of which shall cover all classes of recoveries.

6669

CHAPTER III.

SUPERINTENDENCE OF THE SERVICE.

Art. 10.

The operation of the service is placed under the supervision of a Commissioner of the Government at Havre and the postal agents upon the routes of navigation.

At New York, the duties of the Commissioner of the Government shall be fulfilled by the Consul General of France.

6670 The Commissioner of the Government shall represent the Minister des Postes et des Telegraphes before the contractor and his agents. He shall be charged to watch the general fulfillment of the contract to appraise the Minister of the violations which may occur, and to claim, if there is any reason, the application of penalties incurred.

The agents carried upon the steamers are under the immediate orders of the Commissioner of the Government at Havre. They shall report to him at the return of each voyage all the violations that may have occurred.

6671

Art. 11.

The Minister des Postes et des Telegraphes shall, furthermore, charge with commissions of extraordinary inspection any special agent whom he may deem proper to delegate for this purpose.

Art. 12.

A Commission of Superintendence composed of persons belonging to the military marine, to the public administration and to the commerce, shall be constituted at Havre. The organization of it

shall devolve upon the Minister des Postes et des Telegraphes. In the visits and reports which the Commissioner of the Government shall make on board of the steamers whenever he may deem it necessary, he may demand the concurrence of any of the members of this commission. 6672

The commission shall declare itself upon all of the decisions which may be made by the Commissioner of the Government, concerning which the contractor believes that he ought to appeal to them.

Art. 13.

At the moment of the starting of the steamers, the Commissioner of the Government shall ascertain that the draught fixed for the full cargo is not surpassed. He shall ascertain, furthermore, if the crew is complete and shall certify the hour of the departure of the steamer. 6673

Art. 14.

The Commissioner of the Government and the postal agent shall, when they deem it necessary, demand an inspection of the log.

Art. 15.

6674

There shall be open upon each steamer a register called the Register of Claims, which shall previously be numbered and marked with initials by the Commissioner of the Government at Havre, and upon which the passengers shall have the right to present their complaints upon signing them. This register shall be open for the use of every complainant by the officer on board who shall be the depositary of it. Upon the return of each voyage a certified copy of the complaints duly signed, shall be sent to the Minister des Postes et des Tele-

6675 graphes, either by the postal clerk on board, or by the Commissioner of the Government who shall always have the right to demand an inspection of the Register of Claims. Upon the arrival of the steamer at New York this register shall be open for the visa of the Consul General of France performing the duties of the Commissioner of the Government.

A notice posted in the cabins for the use of passengers of the different classes, shall contain in full, the present article, and shall specify the officer from whom the register of claims can be demanded.

6676

CHAPTER IV.

THE STEAMERS.

Art. 16.

The contractor shall employ new or suitable steamers in such number as he shall judge to be fit, but always sufficient to insure a complete performance of the service. In no case shall he be allowed to excuse himself because of the want of outfit.

6677

Art. 17.

The steamers employed by the contractor shall navigate under the French flag and carry, besides, when in service the postal ensign.

In conformity to Article 8 of the law of the 24th of June, 1883, every new steamer shall have been constructed in France.

Any steamer having already served and been constructed outside of France shall not be used in the new service unless it has been Frenchified before the 22nd of May, 1883.

Except in the case of vis major or the special authorization of the Minister des Postes et des Telegraphes, the work of great reparations or of transformation, such as the renewing of boilers, must be done in ship yards situated in France. 6678

Art. 18.

The steamers designed for operation shall be the property of the contractor.

The contractor shall make known the ship yards and workshop from which the new structure shall be turned out, and likewise the work of conversion or preservation which he shall cause to be performed. 6679

The Minister reserves the right to the superintendence as well upon the whole as upon the details of the constructions and of the reparations. He shall have the power to delegate for this purpose agents who shall have the plans and contracts made known to them and to whom the ship yards or workshops shall be open at all times.

Art. 19.

In case of the loss of one of the ships the contractor shall not be permitted to excuse himself because of vis major for interruption of service, as follows already from Article 16. He shall only be authorized to temporarily replace the steamer lost by a steamer accepted by the Minister and, although not fulfilling in an exact degree all of the conditions required, but conforming to them as much as possible. 6680

He shall be allowed a delay of thirty months to place a steamer in service fulfilling all of the conditions of the specifications.

6681 Art. 20.

The mean annual speed shall be 15 knots an hour at the minimum. The speed at trials shall be 17 knots and 5/10 an hour, at least with a half cargo of maximum weight of passengers and merchandise in tons, the half of the fuel and the option of using for the trials a forced draught (Art. 5 of the law of the 24th of June, 1883). The average maximum draught of the steamer corresponding to a complete loading resulting from a maximum weight of the passengers and of the merchandise together in tons shall be traced in a manner plainly visible at the
6682 middle of the length of the boat and at each side.

Art. 21.

The ships destined for service shall not be employed until after they have been examined and received by a special commission named by the Minister des Postes et des Telegraphes, which shall have the sole right to authorize the placing in service. This commission shall ascertain that the boats conform to the following requisites:

1. That the ships and the equipment are in good
6683 condition, of a sufficient stability and fit for the service for which they are intended.

2. That the machines and the boilers fulfill all of the conditions required by the specifications relating to the proofs of trial, and particularly that the boilers can stand when cold, without any appreciable injury, the test in practice in the military marine.

3. That the ships reach, at the final trials of the duration of four hours at the minimum, the mean speed of at least 17 knots and five tenths an hour

prescribed by the preceding article with the half maximum cargo in weight of passengers and of merchandise in tons, half of the provision of fuel and the option of using for the trials a forced draught. 6684

4. That the minimum displacement of each of the steamers is 5,000 tons for the full cargo. (Art. 5 of the law of the 24th of June, 1883.)

Art. 22.

Every steamer admitted for the service of the line which is subject to the present specifications shall not be taken off, either finally or temporarily, without the authorization of the Minister. 6685

Art. 23.

The steamers shall be appointed like the best of French or foreign mail steamers. They shall contain, besides the chambers necessary for the lodging of the staff and the berths of the sailors, suitable compartments for the reception of passengers of three classes. Rooms shall be provided with all objects necessary for the use of travellers.

There shall be established in the cabins of the third class a sufficient number of bunks provided with a mattress and a pillow. The compartments designed exclusively for women shall be closed. 6686

Art. 24.

Each steamer shall take on board, besides the provision of fuel necessary for the accomplishment of the crossing for which she is intended, a reserve at least equal to a tenth of the said provision. It shall likewise take water and the solid and liquid provision necessary for the crew and the pass-

6687 engers, even in case of delay in navigation. Each steamer shall be provided with a distilling apparatus and with a refrigerator.

Art. 25.

The steamer shall be provided with water-tight partitions of which the number and distribution ought to be such that any compartment being filled with water, the ship would still float in security. Provision shall be made to insure in a suitable manner, the exhausting of water in the different compartments. There shall be no door in the front
6688 air-tight partition. Those which shall be placed in the other partitions shall be arranged to close rapidly in case of a leak.

At the beginning of the construction of the ships the contractor shall announce to the Minister all of the plans of the accommodations such as he shall have determined upon for the postal and commercial service. The Minister shall consider the arrangements to be taken in view of the rapid establishment, in time of war, of pieces of artillery on board of these steamers. The Minister shall have the right to demand of the contractor the partial
6689 reinforcement of the hull, which he shall judge necessary at the places provided for the erection of this artillery. He shall likewise demand a placing in position of the parts destined for the attachment and working of the pieces of movable armor for facility in firing and of passages for powder and ammunition across the bridges, such that these arrangements may not be of a nature to interfere with the customary service on board. The reinforcements and appliances before mentioned shall not be demanded but for a maximum number of six pieces of which the weight and the recoil

strain shall not exceed those of a piece of 14 centimetres of superior model. 6690

For the old ships already constructed the contractor need only communicate the plans of arrangement of these ships, in order that the Minister of the Marine may be able to study in advance the arrangements to be made in order to prepare these ships for the service of war. If the Minister thinks it necessary and possible to cause a part of these appliances to be put in place at the beginning of the undertaking or in the course of execution, without at any time causing any delay in the service, the expenses shall be at the charge of the State. 6391

Each steamer shall be furnished with all of the provisions of armament, of stores and of provisions necessary to secure good navigation.

It shall also be provided with buoys and lifeboats according to custom and likewise with a number of lifesaving belts equal at least to the maximum number of passengers and of the crew. The life-saving belts shall conform to the model which shall be approved by the commission of examination provided in Article 21.

The commission charged with the reception of these ships shall examine the inventory which shall be finally determined by the administration after leaving the contractor and shall always be kept up to date. 6692

The anchors, cables, chains and other objects of iron shall have the dimensions and shall bear the tests determined according to the decision of the Minister des Postes et des Telegraphes, with the advice of the Minister of the Marine after leaving the contractor.

All the objects of equipment ought likewise to fill all of the requisites for good and safe navigation.

6693 **Art. 26.**

At each departure the Commissioner of the Government shall ascertain that nothing interfers with the boat being able to go to sea without jeopardizing the postal service or the safety of persons. If he judges that there is reason to hinder it, he shall immediately call together the commission of superintendence, which shall have the right to demand that the ship be replaced. Upon the default of the contractor to satisfy this injunction, the commissioner shall take such steps as he may deem necessary to assure the departure of the mail
6694 upon the day fixed.

CHAPTER V.

THE MAINTENANCE OF THE OUTFIT OF THE STEAMERS.

Art. 27.

The steamships, their engines and equipments must be kept in a constant state of good order.

The inspection shall be made by such agents as the Minister des Postes et des Telegraphes shall
6695 choose to assign for this purpose, in order that he may assure himself of the condition of the outfit and ascertain that the contractor does not neglect this part of the service.

CHAPTER VI.

THE CREW.

Art. 28.

The make up of the crew in the minimum shall be previously fixed by the Minister des Postes et

des Telegraphes with the advice of the Minister of the Marine, after leaving the contractor. 6696

CHAPTER VII.

THE POSTAL AGENT ON BOARD.

Art. 29.

There shall be on board of each steamer a postal agent named by the Minister des Postes et des Telegraphes and paid by the State. This agent, to whom shall be confided the receipt of the charge and the transmission of the mail, shall be charged to oversee in the course of the voyage the execution of these Specifications. 6697

The postal agent shall have an official character known by all persons on board as likewise an authority complete and exclusive in all that concerns the reception and the transmission of the mail which shall be in his charge.

A cabin of the first class shall be gratuitously provided for the accommodation of the postal agent. Furthermore, a compartment secured with a lock, adjoining this cabin and convenient to serve as a bureau, shall be provided upon each steamer, according to the Specifications which shall be furnished by the Minister des Postes et des Telegraphes. This compartment ought to be well lighted and sufficiently large to assort the mails, which it shall be necessary to separate during the course of the voyage. Another compartment, placed in a secure and convenient position and fastened with a lock, shall be provided for guarding the mails. 6698

The postal agent shall be placed at the table of

6699 the passengers of the first class, or at the captain's table when there is no table for passengers, for the consideration of half of the regular price.

A boat conveniently equipped shall be placed at his disposal, but only for the needs of the service.

No person other than the captain or one of the officers shall have the right to use this boat from the time that the mails have been put on board of it.

In case that the ship shall be forced to anchor in a roadstead on account of bad weather, the postal agent shall demand that there be placed at his disposal such boats on board as can best encounter
7000 the weather. In this event an officer ought to take the command.

The contractor shall be bound to provide, in the way ports and the ports of destination as well as at the stations if any may be erected, for the transportation of the mails and the postal agent, between the points of embarkment and debarkment upon land, and the bureaus where the exchanges of letters ought to take place.

Art. 30.

In case that an agent coming from the Minister
7001 des Postes et des Telegraphes or an agent of general inspection of the finances on duty, or such special agent provided by Article 11, be embarked on board of mail steamers, a first class passage shall be furnished him free of charge, the board not included.

Art. 31.

If there is no postal agent on board the steamers, or if this postal agent finds himself, during the course of the voyage, prevented by any cause whatever from continuing his service, the commander of the ship shall become responsible

for the mails to the same degree as the postal agent, and this without having the right to any compensation because of this fact. 7002

The Minister reserves, in the cases above mentioned, the right to take such measures as he may judge advisable to secure the preservation and the inviolability of the mails.

Art. 32.

In the event that, by reason of an accident befalling one of the vessels of the undertaking, the voyage commenced cannot be completed, the postal agent shall be authorized if it can be done, and with the consent of the captain and the agents of the contractor to secure the transport of the mail by the first French or foreign steamer bound for the place of their destination, or in communication with intermediate points or correspondents. The expense of this special transportation shall be at the charge of the contractor and retained by the administration from the payment of the subsidy attaching to the interrupted voyage. 7003

But if the regular departure from the termini of the line is not at all assured, or if the sending of the mail cannot take place by the steamer making the next regular voyage, the passage not accomplished under the conditions of the present article shall occasion a proportionate reduction from the subsidy. 7004

Art. 33.

There shall not be received on board any but the despatches and the correspondence sent to the postal agent to be entered into the postal service, and the papers of the service, including the bills of lading and the clearance papers and likewise the correspondence of the contractor with his

7005 agents and of them with him. The letters and the packages forming this correspondence ought to be placed in bands, but shall remain in the hands of the captain.

Nevertheless, in case of suspicion of fraud, the postal agent shall have the right to demand the opening of the letters and packages, and shall proceed on board, and in the presence of the captain, upon a summary examination of their contents.

In conformity to the provisions of the law of the 27th of prairial of the year 9, it is prohibited the contractor to carry sealed packages.

7006 Every violation of the laws upon the carriage of letters committed by the contractor or by his agents shall be punished in accordance to these laws.

In case of recidivation, and if the circumstances shall indicate that the act of violation ought to be attributed to one of the agents of the contractor, this agent upon the demand of the Minister should be discharged without prejudice as to the penalties which he shall have incurred.

CHAPTER VIII.

7007 ## THE TRANSPORTATION OF PASSENGERS AND MERCHANDISE.

Art. 34.

The contractor shall have the liberty of transporting by the steamers passengers and merchandise.

The proceeds of the transportation of passengers, of gold and silver bullion and of merchandise shall belong to the contractor.

The postal proceeds of every nature shall belong to the Department des Postes et des Telegraphes. 7008

Neither the contractor nor any of the agents on board shall engage in any commercial transaction either for his own account or in partnership upon the line indicated in these Specifications.

Art. 35.

The contractor shall be bound to undertake the transportation, under the usual conditions of the tariff of the culprits returned to Europe in consequence of acquiesced extradition, either for the benefit of France or of foreign State with which there may be a special agreement provided to this effect. 7009

The transportation shall be accomplished under the conduct of special agents at the expense of the Government reclaiming and upon the requisition of diplomatic or consular agents of France.

Art. 36.

Passengers having civil or military functions, the ministers of the different churches known or recognized by the State belonging to the French nation, foundation scholars and all other persons travelling with the consent of the Government for some public interest, shall be admitted upon the steamers of the contractor at thirty per cent. of rebate upon the price which shall be adopted by the contractor, as well for the passengers of the first and second classes as for the passengers of the steerage, upon the requisition of the Minister des Postes et des Telegraphes transmitted by the Commissioner of the Government at Havre; upon that of the governors or commanders of naval stations in our colonies; upon that of diplomatic or consular agents of France in foreign parts. 7010

7011 This provision applies equally and in conformity with the regulations of the several ministerial departments to the family or to the suite of persons embarked upon requisition, even if they do not depart by the same steamer. Nevertheless, if the embarkation of passengers by virtue of the two preceding paragraphs exceeds the quarter of the places disposable upon any ship, the contractor must be informed eight days in advance.

Sailors travelling singly at the expense of the State, convalescent soldiers of colonial stations and garrisons, indigents, demented and creoles
7012 being sent back to their own lands, young Frenchmen coming to the metropolis to fulfill their military duty and those who, after discharge, return to the country in which they were living before their enlistment, shall be transported at the expense of the State at the price of 7 francs a day, board included.

The board shall be that of the crew for the classes enumerated above, with the exception of under-officers, who shall be admitted to the table of the boatswains.

They shall be received on board the steamers in France upon the demand of the Minister des Postes
7013 et des Telegraphes transmitted by the Commissioner of the Government (in our colonies upon that of the governors) and in foreign countries upon that of the diplomatic and consular agents.

The number of persons embarked upon the terms of the preceding paragraph shall not exceed ten persons a crossing upon each steamer without the consent of the contractor.

The requisition, inasmuch as it concerns the demented, shall not be delivered except after an adverse examination by the physician on board and another physician designated by the diplomatic or

consular agent, of the state of the unfortunate and of the material conditions under which the transportation must be performed. If there is a disagreement, the diplomatic or consular agent shall act as a judge to determine if they ought to proceed or to delay placing on board, but he shall be bound then in the first case, to have the demented accompanied by a person specially appointed for his guard. 7014

The Department of the Marine shall have upon each steamer the right to twenty-five places at the price of seven francs a day and upon the conditions of board indicated above for under-officers, sailors or soldiers or persons of like character. 7015

Art. 37.

The passengers shall be treated on board, as concerns the table, the conveniences and the service in the best manner in use upon French or foreign steamers. The Register of Claims provided in the 15th article above shall be kept at their disposal to receive the complaints that they may believe themselves entitled to make. If the importance of these claims calls for action, the Minister shall, if he thinks it in order, demand the discharge of the agents recognized as guilty. 7016

Art. 38.

When the demand shall be made of the contractor he shall be bound to receive on board the steamers, the arms and provisions of whatever nature, destined for the service of the State, until they shall equal a tenth part of the tonnage of the ship. The expense of transportation of these objects shall be paid with a rebate of thirty per cent. upon the price of the tariff established by the contractor. In case of the embarkment of munitions

7017 of war, all of the responsibility and risk which they shall occasion shall be borne by the State. If the State causes a special agent to accompany these munitions, the contractor shall follow his orders for stowing the munitions aboard and in the precautions to be taken.

It is, furthermore, well understood that the contractor is only bound to receive the quantities of objects which can be placed in the space disposable on board of his steamers at the moment when he shall have been notified.

Art. 39.

7018 The contractor shall inform the Minister des Postes et des Telegraphes every three months, in a form which shall be later determined, of the statistical reports of his operations as regards the transportation of passengers and of merchandise.

CHAPTER IX.

THE PENALTIES AND THE PREMIUM FOR SPEED.

Art. 40.

7019 The departure of the steamers shall take place upon the days and hours fixed by the Minister des Postes et des Telegraphes.

Every delay in the hour of departure as well from the termini as from the intermediate points, excepting the cases of vis major duly attested, and those where the steamers shall have been delayed temporarily by competent authority in virtue of a requisition, shall render the contractor liable to the fine of fifty francs an hour for the first twelve

hours and of 100 francs an hour for the hours following. 7020

If it is proved that a delay has been occasioned by the tardy loading of merchandise, these fines may be doubled.

Art. 41.

In case the delay caused at the departure of a steamer shall exceed 24 hours, the Commissioner of the Government, and in his absence the postal agent, shall take, in concert with the legal authorities, after hearing the contractor, all the measures necessary to despatch the mails, and all of the expenses resulting from these provisions shall be placed at the charge of the contractor. 7021

When for any cause the mails shall only be sent by the steamer which shall make its regular departure after that of the steamer failing to start, the number of miles which shall have been covered under these conditions shall give rise to a proportionate reduction of the subsidy.

Art. 42.

In case of a stop not justified by the circumstance of vis major, the penalty shall be charged for the first stop at a thousand francs and at 2,000 for the second, and on the third violation this penalty shall be charged at 5,000 francs. 7022

In the case provided by the preceding paragraph, if there has been merchandise or passengers taken on board or discharged, the penalty may be doubled.

Art. 43.

In the case of the loss of a steamer, if the replacement prescribed by Article 19 is not effected within a certain time, the contractor, save in the

7023 unforeseen circumstances, of which the Minister shall be a judge, shall be amenable to a fine of 500 francs for each day of delay.

Art. 44.

In case the contractor shall not commence the service in the time fixed by Article 47 following, he shall suffer a retention of 500 francs a day for the delay.

Art. 45.

In the case that the mean annual speed fixed in
7024 Article 20 above shall be exceeded, there shall be allowed to the contractor a premium calculated at the rate of 12 francs a ton gross gage and by the tenth of a knot of increase of speed over the required rate. If the mean annual speed is not obtained, the contractor shall be subject to a retention calculated at the rate of 8 francs a ton gross gage and by the tenth of a knot under the required rate.

At the end of each annual period, including an aggregate of 52 voyages, going and returning, there shall be prepared a report of the result of each crossing. The total of these partial results shall
7025 establish the figure of the mean speed and consequently of the premium which shall be accorded for employing it to the contractor or of the retention which ought to be imposed upon him, save an account being kept in this last case of circumstances of vis major duly authenticated.

The number of tons gross gage which shall serve for the adjustment of the premiums and of the penalties shall be the average of the gross tonnage of the steamers employed during the service.

In no case shall the amount of the premium for

the year exceed twelve hundred thousand francs (1,200,000 fr.). (Art. 6 of the law of June 24th, 1883.) 7026

When one of the steamers employed in the service shall not attain the mean speed of 15 knots for ten consecutive voyages going and returning, it shall be rejected as unfit. It may me presented for new trials after modifications, or it shall be replaced by a new boat within a maximum delay of thirty months.

Art. 46.

The amount of the penalty and of the retention fixed according to the provisions of the above articles shall be deducted by the Department des Postes et des Telegraphes from the sum due the contractor. 7027

CHAPTER X.

THE DURATION CONTRACT.

Art. 47.

The contract shall be in force beginning with the 22nd day of July, 1886, until the 21st day of July, 1901, inclusive, that is, during fifteen consecutive years. (Art. 1 of the law of the 24th of June, 1883.) 7028

Nevertheless, the contractor engages, by the very act of the award of the contract to assure the service during the period from the 22nd of July, 1885, to the 21st of July, 1886, under the conditions which shall be made known to him by the Minister des Postes et des Telegraphes. These conditions ought not to exceed those which are imposed upon the actual concessionary until the 22nd of July, 1885.

7029 The voyages in course of execution on the last day of the contract shall be regularly accomplished.

CHAPTER XI.

MANNER OF PAYING THE SUBSIDY. TIME OF PAYMENTS.

Art. 48.

By reason of the subsidy which shall be allowed, the contractor shall perform the service mentioned in Article 1 of the present Specifications at
7030 his expense, risk and peril, and all of the expenses of whatever nature, inclcuding the perils of the sea, shall be at his charge.

Art. 49.

The payment of the subsidy shall be ordered at the end of the term by the Department des Postes et des Telegraphes from month to month and by twelfths subject to the deduction of the sums retained, which may have been pronounced in the cases provided in these Specifications.

The payments shall take place at Paris or at
7031 Havre at the option of the contractor.

CHAPTER XII.

IN CASE OR WAR. REGULATION OF INDEMNITIES.

Art. 50.

In case of war the Government shall undertake the risk which may result to the steamers of the enterprise, at least if it has not advised the contractor and authorized him to cease the service.

After this authorization the contractor shall 7032
have the option of continuing all or part of the service at his own risk and peril. The time of the total or partial cessation shall be at the choice of the contractor comprised or not comprised in the duration of the contract.

If the contractor ceases the whole or a part of the services, the State can take possession of one or more of the ships remaining out of employment with all or a part of their stores and provisions.

An estimate shall be made of the whole by a commission composed of two persons chosen by the Minister des Postes et des Telegraphes, and 7033
of two other persons chosen by the contractor. These four persons shall by a majority vote appoint a fifth upon whom the presidency shall devolve. In case they cannot agree, this appointment shall be made by the civil tribunal of the district in which the contractor has his chief place of business.

After the war, the ships, stores and provisions shall be returned, and upon the re-commencement of the service a similar estimate, which shall take into consideration the depreciation, the losses and the superior value from any cause whatsoever, 7034
shall be made.

Beforehand the State shall repair the ships, in order that they may continue the postal and commercial service.

The State shall pay to the contractor for all rental an annual sum representing the interest at 5 per cent. of the capital determined by the above commission and the part of the expenses remaining in its charge. The subsidy shall, furthermore, be suspended during the entire interruption of the service.

7035 Art. 51.

In case that the State shall not take advantage of the option given it to take possession of all or of part of the ships, stores and provisions of the contractor, it should pay interest as well upon the capital as upon the depreciation of the vessels and of the material and provisions of which it shall not have taken possession, and, to cover the contractor for the expenses resulting from its charge, an indemnity which shall be regulated by the arbitral commission instituted by Article 50.

7036 Art. 52.

In any case, the war being terminated, the Minister des Postes et des Telegraphes may relieve the contractor from the obligations of the contract if the chances of the war have placed him in such a position that he is unable to continue the service.

On his side, the contractor shall have the option of refusing to execute the contract at once if the ships delivered by him to the State are not returned to him in a sufficiently large number to permit him to perform the service completely. In
7037 this case, arrangements shall be made between the Minister and the contractor to fix a date for the total or partial re-commencement of the service.

Art. 53.

In every extraordinary political circumstance, even outside of the case of maritime war, the Government can purchase or take for freight one or more steamers. Under the same circumstances and in case of urgency the governors in the colonies who may be obliged to effect a transport of troops, may require the embarkment of these troops upon the ships of the contractor.

In these two cases the indemnity of sale or freight charges as likewise those due for damages to which the contractor may be subjected during the execution of his service, shall be regulated by the commission instituted by Article 50. 7038

CHAPTER XIII.

SPECIAL PROVISIONS.

Art. 54.

In the case in which, for any other cause than for the cause of war or of vis major, which shall interrupt the continuance of the service, the subject of these Specifications, the contractor should suspend or cease operation, the State may have the right to take, upon the opinion of experts, the ships with all their stores for operation and their provisions without prejudice to the damages which may be due to it. 7039

Art. 55.

The contractor shall not sublet this undertaking in whole or in part without the consent in writing of the Minister des Postes et des Telegraphes. If it is discovered that he has sublet without that previous consent, the Minister des Postes et des Telegraphes shall have the right to renounce the contract without indemnity to the contractor. 7040

The retransfer shall not otherwise be authorized, except for the benefit of a grantee who shall have been previously accepted by the commission provided in Article 3 of the law of the 24th of June, 1883.

7041 Art. 56.

The contractor shall be responsible as against the State for all of his agents.

Art. 57.

The contractor of the service shall be a Frenchman.

If the enterprise is confided to a company, no person shall either be a director, take part in the Board of Directors or of the Council of Administration or Council of Supervision, unless he is of
7042 French nationality.

Art. 58.

The contractor, if he is not domiciled in Paris, shall have a representative there duly accredited, to whom all communications and notifications deemed necessary shall be validly made.

Art. 59.

All the difficulties to which the execution or the Interpretation of the clauses of these Specifications may give rise shall be determined in cham-
7043 bres by the Minister des Postes et des Telegraphes, save an appeal to the Conseil d'Etat.

Art. 60.

The contractor shall pay the expenses of stamps as well for the contract as for the papers of authenticity to be produced and the charge of registration.

He shall furnish to the Department des Postes et des Telegraphes two thousand copies of the present Specifications as well as the text of the law of the 24th of June, 1883, to which it belongs.

Art. 61. 7044

These Specifications and all the acts which appertain shall be registered, classed and inspected according to the law of the 20th of February, 1872.

APPROVED:
Paris, the 2nd of July, 1883.
The Minister des Postes et des Telegraphes,

Ad. COCHERY.

ACCEPTANCE.

I, the undersigned, EUGENE PEREIRE, President of La Compagnie Generale Transatlantique, acting in the name and as the representative of this Company, in virtue of powers which have been given me by the Council of Administration. 7045

After having been informed of the Specifications determined upon by the Minister des Postes et des Telegraphes on the 2nd of July, 1883, for the operation of the maritime postal service between Havre and New York to be executed by steamers from the 22nd of July, 1886, to the 21st day of July, 1901, inclusive, agree to accept the engagement and to hold myself responsible for the execution of this service in consideration of an annual subsidy of Five millions four hundred and eighty thousand francs (5,480,000 f.) and to subject myself furthermore without any reservation, to all of the clauses and conditions imposed by these Specifications and especially, to the obligation of assuring a provisional service during the period from the 22nd of July, 1885, to the 21st day of July, 1886, under the conditions provided in Article 47. 7046

Done at Paris, the 23rd of July, 1883.

The President of La Compagnie Generale Transatlantique,

Signed: Eug. PEREIRE.

7047 ABSTRACT OF THE MINUTES OF THE LETTING.

The Minister des Postes et des Telegraphes, mindful that since the 23rd of July, 1883, the date at which the operations were begun under the first letting of the maritime postal service between Havre and New York, according to the law of the 24th of June, 1883, there was not presented in the space of ten days, beginning with that first letting, any offer of rebate upon the price previously demanded, approves the adjudication announced on the 23rd of July, 1883, and declares
7048 Mr. Eugene Pereire, President of La Compagnie Generale Transatlantique, acting in the name and as the representative of the said company, located in Paris at No. 5 Rue Halevy, the grantee of the grant during fifteen years, to date from the 22nd of July, 1886, of the maritime postal service between Havre and New York, under the clauses and conditions of the Specifications approved on the 2nd of July, 1883, in consideration of an annual subsidy of Five million four hundred and eighty thousand francs (5,480,000 f.), as a result of the acceptance hereunto affixed, delivered by Mr.
7049 Eugene Pereire as and for the company, at the sitting of the 23rd of July, 1883.

Done at Paris, the 4th of August, 1883.

Done at Paris, the 4th of August, 1883.

The Minister des Postes et des Telegraphes,

Ad. COCHERY.

NOTE.

The Specifications bearing the signature of the grantee has received the stamp demanded by the law for administrative acts.

The minutes of the granting of the 23rd of July, 1883, declared in favor of La Campagnie Generale Transatlantique, represented by Mr. Eugene Pereire, its President, have been registered according to the requirements provided in the law of the 20th of February, 1872, in conformity with article 61 above. 7050

The remark which here follows has been affixed:

"Registered at Paris, Bureau of administrative acts, the 21st of August, 1883, Fol. 68, right-hand page, Case 4."

"Received: One hundred and two thousand seven hundred and fifty francs, decimals included. 7051

Signed: VILLETE."

7052

Southern District of New York, } ss.:
United States of America, }

I, THOMAS ALEXANDER, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the writings annexed to this certificate, to wit: pamphlet attached to answers to interrogatories of George Deslions and others *In re* Petition of La Compagne Generale Transatlantique for limitation of liability, as owner of the SS. "La Bourgogne," have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In testimony whereof I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18th day of April, in the year of our Lord One thousand nine hundred and five, and of the Independence of the said United States the one hundred and twenty-ninth.

THOS. ALEXANDER,
Clerk.

[SEAL.]

FIRST OPINION OF THE COURT 7056

United States Circuit Court of Appeals,

SECOND CIRCUIT.

No. 174.—October Term, 1904.

Argued April 20, 1905.
Decided June 23, 1905.

7057

In the matter
of
The Petition of La Compagnie Generale Transatlantique, owner of the Steamship "La Bourgogne," for Limitation of Liability,
Appellant,
George Deslions and others,
Appellants.

Appeals from the District Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe and Coxe.

7058

This cause comes here upon appeal from a decree of the District Court, Southern District of New York, granting petition for limitation of liability for damages and loss occasioned by a collision between the steamship "La Bourgogne" and the ship "Cromartyshire" off Sable Island in a dense fog at 5 A. M. July 4, 1898. The opinion of Judge Townsend, sitting in the District Court, dealing with the 7059
questions here presented, is reported 117 F. R. 261. Upon this opinion a decree was entered granting the prayer for limitation of liability, holding "La Bour-

7068 agreement to the contrary, be recovered back if the voyage be broken up, adjudged that an item of $3,867 for prepaid freight, wharfage and advance charges must be deducted from the amount the petitioner should be required to pay in order to secure limitation of liability. As to an item, however, of $7,770 passage money it was held: "As the passage money in question was prepaid under an express agreement that the owner of the ship should not refund it, notwithstanding a failure to deliver
7069 the passengers at the place of destination, we think it clear that it must be regarded as earned." The Court further held that the sum thus directed to be paid in should not be diminished by the amount expended by the owner in forwarding passengers to their destination nor by the amount of certain sums voluntarily given to some of the passengers. The case of the Scotland (105 U. S., 24) was distinguished because it disclosed no such agreement; while in the case of the "Corona" "the amount prepaid for passage was, by the express stipulation of the
7070 parties, made absolute and unconditional and should in our opinion, be regarded as earned."

We fully concur in these views expressed by the Court of Appeals in the Ninth Circuit and find in the case at bar a similar agreement both as to freight and passage money. The bills of lading all contained the clause: "11. Also that the freight prepaid will not be returned, goods lost or not lost." The first clause in the passage ticket reads: "Passage money to be paid in full before the departure of
7071 the steamer and at all events belongs to the company." And in the sixth clause it is provided that "The company will not be liable for loss or damage occasioned by accidents, fire, perils of the sea, or unforeseen circumstances, or by barratry fault or negligence of the captain, pilot, sailors, members of the crew or passengers." We are of the opinion, therefore, that the petitioner should pay over to the trustee 100,703.08 francs for prepaid passage money and 12,716.43 francs for prepaid freight, New York to

Havre, aggregating 113,419.57 francs, with interest 7072
from the date of the disaster.

II. As to the freight and passage money collected for the crossing from Havre to New York.

The statute uses the phrase "freight for the voyage" and claimants contend that the voyage in question was the round trip from Havre to New York and back again to Havre. Very many authorities are cited by both sides, and the District Court has discussed the question at some length. As was to be expected, an examination of the citations shows 7073
that the word "voyage," like so many other words, is somewhat elastic; the meaning to be given to it in any particular case is largely dependent upon the facts of that case. We are dealing now with the word as used in a statute which provides that the ship owner's liability for loss of freight, etc., on a particular voyage may be limited when he gives up the earnings of the same voyage. The voyage which exposes the property to risk is the voyage the earnings of which are to be paid in. As was said in the Main (152 U. S., 7074
123), "the real object of the Act was to limit the liability of vessel owners to their interest in the adventure, *i. e.*, to the "adventure" in which the persons or property transported was put at risk. In determining precisely what such adventure is under this statute, we concur with the District Judge in the conclusion that the controlling circumstances are not to be found in the ship owner's agreements with individual shippers, nor in the length of time for which a crew may be hired, or the 7075
ship provisioned; nor is it important what nomenclature may be adopted in the ship owner's log books, or in the daily talk of its officers; nor how it keeps its accounts, nor how often the ship is inspected. The fundamental question seems to be this: considering the merchandise and passengers which are shipped as a whole, when does the ship reach a port where such merchandise and passengers are no longer any part of them exposed to the risks of

7076 transport by that ship. Now it may very well be that an empty ship will take on a cargo, complete or partial, in a particular port, and may visit in succession other ports, in some or all of which it discharges more or less of its original cargo, taking on other cargo in its place, which it carries to one or other of the ports it subsequently touches at until finally it reaches a port of complete discharge. Whether the whole or some particular portion of that continuous transit should, in the case of dis-
7077 aster between two of the ports touched at, be considered the "voyage" of the statute may present interesting and difficult questions, but in our opinion the case at bar is free from difficulty. "La Bourgogne" is one of a fleet of steamers which are operated solely as an "ocean ferry" between the ports of Havre and New York; each trip or crossing of each steamer is by itself a complete maritime transaction. A steamer, lying at Havre, empty except for her own equipment and stores takes on board a cargo under contract with shippers to deliver it in New
7078 York; no merchandise is shipped to be carried by that steamer to New York and back again to Havre. In like manner she takes aboard her complement of passengers under contract to take them all to New York and to land them there. When she sails from Havre she exposes this cargo and these passengers to the risks and peril of that crossing; but when she reaches New York she discharges all her freight and lands all her passengers and becomes herself an empty ship again, ready to take on other cargo and
7079 other passengers for another crossing. When cargo and passengers are safely landed in New York all their risks of the crossing are over, the adventure as to them and for which they paid freight and passage money is fully terminated, and it seems unreasonable to hold that the money thus paid by them should be made applicable as a fund for the relief of other cargo and other passengers, who subsequently leave a place of safety in New York to be embarked independently in another maritime adven-

ture from New York to Havre. Passage tickets are 7080
often issued covering a trip out and back, but that means only back by the same ferry, some other steamer, or the same steamer on some subsequent crossing, will usually carry them. And even if in some instances a few individuals may return by the next trip of the same steamer that does not alter the situation; they do not remain on the ship, they are landed in a place of safety ashore, their connection with the ship is terminated and the adventure on which they originally embarked is at end. We con- 7081
cur with the District Judge in the conclusion that the freight and passage money for the voyage from Havre to New York need not be paid over to the Trustee.

III. As to the subsidy received from the French Government.

The contract under which this was paid has been put in evidence. It shows that the contractor (the petitioner here) undertook to operate a weekly steamship line from Havre to New York, 52 voy 7082
ages going and returning, each year; that it agreed to employ new or suitable steamers, in number always sufficient to insure a complete performance of the service. The character, size, speed, equipment, etc., of the steamers are carefully provided for. The contractor engages to transport gratuitously all of the mails upon the line from Havre to New York. [Presumably this covers mails from New York to Havre, although the language is not entirely clear.] The contractor also engages to transport gratui- 7083
tously all gold, silver and copper coins for the use of the State. The loss of one of the ships shall not be an excuse for interruption of service; the contractor shall only be authorized to temporarily replace the steamer lost by a steamer accepted by the Minister, and shall be allowed a delay of thirty months to place a steamer in service fulfilling all of the conditions of the specifications. In the event that, by reason of accident befalling one of the vessels, the voyage commenced cannot be completed,

7084 the postal agent on board shall be authorized, if it can be done, to secure the transport of the mail by the first French or foreign steamer bound for their place of destination. The expense of this special transportation shall be retained from the payment of the subsidy attaching to the interrupted voyage. If the mails cannot be sent forward "the passage, not accomplished under the conditions of the present article, shall occasion a proportionate reduction from the subsidy." Various penalties are provided
7085 for, and also premiums for speed in excess of the requirement of the contract; and there are provisions as to the disposition of the ships in case of war. The compensation for the whole service is fixed at 5,480,000 francs, payable in equal monthly instalments. We are of the opinion that this subsidy cannot be considered as freight paid for transport of the mails, one-fifty-second of the whole being arbitrarily apportioned to each round voyage. It must be treated as an entirety; it is the lump sum which the French Government has seen fit to pay
7086 in order to stimulate the creation and maintenance of a fleet of steamers of a certain class, no old steamer being allowed in the service unless it "has been Frenchified before May 22, 1883," and every new steamer to be built in France for the promotion of French industry—all sailing under the French flag for the promotion of French commerce. In one sense it may be said that by making each double-crossing the steamer making it earned a part of the whole sum, but what part it so earned we cannot
7087 say. The compensation covers not only the crossing steamers but also those held in reserve to take the place of any which may break down; and, as to all of them, "in every extraordinary political circumstance, even outside of the case of maritime war," the right secured to the Government to "purchase or take for freight one or more steamers," the details of whose speed, capacity and construction it has arranged for to suit itself, it seems impossible to say what fraction of the 5,480,000 francs is to be

considered the compensation to any single steamer for undertaking to transport the mails on a single trip from New York to Havre. 7088

IV. The claims for damages by reason of loss of life.

The disposition of these claims is already settled by decision of this Court. "The territorial sovereignty of a State extends to a vessel of the State when it is upon the high seas, the vessel being (deemed) a part of the territory of the State to which it belongs; and it follows that a State statute which creates a liability or authorizes a recovery for the consequences of a tortious act operates as efficiently upon a vessel of the State when the vessel is beyond its boundaries as it does when it is physically within the State" (International Nav. Co. *v.* Lindstrom, 123 F. R., 475). The "Bourgogne" upon the high seas was a part of the territory of France, and the record shows conclusively—indeed the proposition is not disputed—that if the "Bourgogne" were in fault for the collision (the French courts held she was not) the claims for damages by reason of loss of life could have been maintained in the French courts against the fund paid in, in limitation of liability. The decree appealed from should be modified accordingly. 7089 7090

V. The alleged faults of the "Bourgogne."

The English Court upon evidence mainly from the "Cromartyshire," supplemented by three witnesses from the "Bourgogne," and partly also upon calculations based on the injuries apparently sustained, found that the steamer was going at "full speed reduced." The French Court found that she was going "at twelve knots, about." The District Judge has reached the conclusion that the speed was about ten knots. A careful examination of all the testimony produced here has satisfied us that although there may have been a reduction she was certainly not going any slower and probably 7091

7092 was going faster than ten knots. It is unnecessary to rehearse the evidence, the statement in the opinion below is sufficient indication of the grounds for this conclusion; the character and extent of the wound received by the "Bourgogne" are suggestive of a high speed on her part. Undoubtedly the fog was exceedingly dense, that fact is uncontradicted, and the steamer had not "reduced her speed to such a rate as would enable her to stop in time to avoid collision after an approaching vessel came in sight, provided such approaching vessel were her-
7093 self going at the moderate speed required by law" (The "Chattahoochee," 173 U. S., 540). We are emphatically of the opinion that such a speed under the circumstances was excessive, and since it probably prevented an earlier foghorn blast being heard from the "Cromartyshire," it cannot be held not to have been a proximate cause of the collision. We express no opinion as to any fault of the "Cromartyshire"; we are not trying her cause, and none of her witnesses (except the Captain) have been
7094 examined in this cause; indeed there is some question raised as to the admissibility of his examination. Moreover, with allowance of the death claims even one-half of the damages found in this proceeding will greatly exceed the sum transferred to the Trustee in limitation of liability.

VI. As to the contention that the disaster occurred with the "privity or knowledge of the owner."

None of the officers of the defendant were on the
7095 "Bourgogne," nor did any of them direct, interfere with or approve her navigation; there was undoubtedly no *direct* privity or knowledge of this disaster on the high seas thousands of miles from the home office of the defendant. The contention, however, is that petitioner never made proper regulations to govern its masters as to navigation of its vessels in a fog, and that it encouraged or sanctioned or knowingly tolerated a persistent violation

of the rules of navigation (in that particular) on 7096
the part of its officers.

As we have seen, the line is operated under a contract with the French government, which imposed certain penalties for delays and stoppages "not justified by the circumstance of vis major," and provided for the presence on each steamer of a so-called "agent of Postes." The petitioner issued to all its captains a set of rules and regulations called "Reglement du Service á bord." Article No. 395 of such rules reads as follows: 7097

"In conformity with the rules of international regulations having for object the prevention of collisions—'All vessels under steam which approach each other so that there may be risk of collision must diminish their speed, or stop and go backwards, if necessary. All vessels under steam must, during foggy weather, preserve a moderate speed.' The Captain under these circumstances must diminish the speed of his engines and, in agreement with the Agent of Postes, the Captain must make known by process verbal the delays which such manœuvres 7098
may have occasioned."

It is argued that this rule is insufficient, because it would be a sufficient compliance with it if, in a dense fog, a captain diminished speed somewhat from the maximum, although the diminution was not sufficient to bring the steamer down to "moderate speed." This is not a fair construction of Article 395. Possibly if the international rule were not quoted there might be room for argument that the article lacked expliciteness; but with the full 7099
text of the international rule incorporated as it is, no captain could be in doubt that the deminution he was directed to make should be such as would conform his speed to the navigation which the international rule prescribed.

However positive and precise a rule may be, it will not avail the person who has prescribed it, if he encourages, or sanctions, or knowingly tolerates

its violation. It is contended that petitioner did thus sanction or knowingly tolerate excessive speed, and claimants seek to establish that proposition by proof that the steamers of this line so frequently violated the rule of "moderate speed in a fog" that it must be assumed that petitioner's officers knew of such violation, and by not taking any steps to put a stop to such a reprehensible practice must be held to have tolerated or encouraged it.

There may be a widespread impression that the various Atlantic liners, which seek for and obtain the patronage of the traveling public by means of the quick passages they make, are able to make such passages only by running at excessive speed in a fog. Nevertheless, the Court cannot take judicial notice that any particular line thus constantly violates the law, nor can it hold the owners of the line in damages upon the theory that they are persistent law breakers without proof of the fact. The evidence produced to show infractions of the "moderate speed" rule so frequent as to bring knowledge thereof home to the officers of petitioner is as follows:

During the eleven years preceding the loss of the "Bourgogne" there appears to have been three occasions when steamers of petitioner's line were in collision with other vessels in a fog, and were held by the Court which investigated the accidents to have been going at excessive speed ("La Bretagne" with the "Tellus," May 7, 1887, "La Normandie" with the "Charlotte Webb," May 18, 1889, 58 F. R., 427; "La Touraine" with the "Sully," Sept. 10, 1894). These three detached occurrences are not especially important, and they lose all persuasiveness when it is seen that subsequent to the last of them there are only two reported occasions when steamers of petitioner's line were in collision with other vessels in a fog, and in both cases the Courts held petitioner's vessels to be going at moderate speed and free from fault ("La Bourgogne" with the "Ailsa," Feb. 29, 1896, 86

F. R., 475; "La Champagne" with the "Ville de Rio," July 4, 1898). 7104

Claimants called six witnesses who had made voyages on the company's steamers with the following results:

Peters was in the employ of petitioner from 1886 to 1889 as cook, deck steward and second steward, and made about eighty-eight voyages on the "Gascogne," "Bourgogne" and "Navarre." He testified that about six or seven voyages out of ten there were periods during which the weather was foggy; that the steamers never slowed down; that in mid-ocean they went full speed, but in the English Channel the speed was now and then reduced; that it was the same on the Hamburg Line and the Red Star Line, on which he had served; he had always seen them in mid-ocean when it was foggy going full speed to make the time. 7105

Levanoux, a flour merchant, had crossed frequently by the French line since the fast steamers were built in 1886 till 1893, his last trip in 1893 being made on the "Bourgogne." On *that* trip there was fog, lasting how long he could not say, but he didn't notice any slacking of the speed, which he had noticed before the fog was full speed, and doesn't recollect any diminution indicated in the posted daily runs. His recollection is that the same was true as to the daily records on other trips. He had noticed delay in arrival on this side occasioned by fog, but as to arrivals at Havre he "could not answer so very well," there were some variations in time of arrival. His observations were made in a casual way. 7106 7107

Baruch, an importer of embroideries, had crossed on steamers of this line most every year since 1895. He testified that during those voyages there were periods of fog, sometimes three, sometimes four days, and that there was no slowing down. Riker, an importer of millinery goods, had made two trips a year since 1889, had noticed periods of fog, which might last from twelve to twenty-four or thirty-six

7108 hours, but never noticed any lessening of speed during such fogs, nor could he see that it made any difference in the daily runs. Steiner, who is engaged in business in New York, had made six voyages by the same line at intervals between 1885 and 1900. The only time he recollects fog was during a passage by "L'Aquitaine" in 1900. One day was quite clear and the next they met a very thick fog, but at the end of the day had made as many knots as the day before when it was clear. Burras,
7109 a buyer of flowers and feathers, had crossed by the line twice a year for 16 or 18 years, and never noticed any change of speed or in the announcement of daily runs during periods of fog.

Of the witnesses called by petitioner Felsenberg, a commission merchant, had made three voyages by the same line, one by the "Bourgogne" (her last voyage out before she foundered), and noticed they slackened speed during fog when they came to the Banks, and they had about two days' thick fog. As to the daily runs, he remembered that when the weather
7110 was dark or foggy the number of knots was not so great. On the trip by the "Bourgogne" they reached Havre Sunday morning, only a few hours late. Pagnon, a silk importer, who had crossed by petitioner's steamers more than sixty times, testified: "I have seen very often, not to say always, a reduction of speed in case of dense fog; sometimes I counted myself the revolutions of the engine. In the old time when they had side-wheelers it was very easy to count; the revolutions were less nu-
7111 merous. At that time I remember pretty well that when there was a reduction of 20 per cent. we considered it fair. With the screw steamers very often I have seen, and I can be a witness to it, a sensible reduction; 15 to 20 revolutions, as far as I can remember. I think I have seen more, too. I have seen those steamers stop in case of fog. * * *

"Q. How about reduction of speed, if you have observed any on the Banks or about the Banks, or in mid-ocean? A. Yes, very often; I have seen re-

duction under the same circumstances. I have seen 7112
diminution of speed, coming nearly to a stoppage, in a place which is called by the French navigators the Banquereau ; the small banks, which are north of the large banks. I have seen a steamer there stop entirely on account of the fog, and when the fog disappeared then we saw a few fishermen there. * * * In fact, I don't think I have seen any part of the ocean where they did not diminish in speed in case of severe fog. And sometimes it happened to me to spend twelve days in a journey which we 7113
could have made in that steamer in nine days, because constantly we were going at reduced speed, except when there was a little opening. * * *

"Q. What are the limits that you give to a sensible reduction. A. I think I said also 20 per cent. and more; but usually I think 20 per cent.; at 70 revolutions 20 per cent. would make it 56, and sometimes it went lower.

"Q. Are you prepared to swear that you can say that there has been a reduction of speed of more than 20 per cent. in fog? A. Sometimes, some- 7114
times, yes; I went so far as to state that I have seen the boat stop.

"Q. I wasn't asking about stopping; I was asking asking about reductions of speed of the engines. A. I have seen it go very slow; that is all I can swear, very slow; say not half; very seldom; I have seen them go carefully, feeling their way and anxious and desirous to avoid any mishap.

"Q. Those cases have been, as I understand you, in the English Channel, or approaching the light- 7115
ship? A. And also in the Banks, where they often would have a great many fogs, you know; everywhere where there is a fog"

Benson, agent for a silk house, had crossed by these steamers more than sixty times, had several times looked at the indicators in dense fog and found that the speed had been reduced; the indicator was very often to half speed or even lower than that down to what they call slow; and he re-

7116 membered that during fogs there was a decided difference in the day's run. Metz crossed in the "Bourgogne" in May, 1898; she was then commanded by Captain Deloncle, who went down with her; he noticed that "she was going at a slow rate during a fog of about an hour's duration." Two of the captains testified that they always slowed down in a fog, increasing the speed whenever the fog lightened up, as in their experience it frequently did.

7117 As the District Judge remarked: "The determination of the question as to what is to be done in all the varying stages between a light haze and a dense fog rests upon a great variety of circumstances and conditions." There is no fixed speed prescribed by the international regulations; it should be varied according to the distance at which objects can be observed by the navigators and lookouts, who are better situated to appreciate the density of the fog than are observers from the promenade deck or the door of some saloon. The estimates as to speed
7118 given by passengers who are not experts are generally unsatisfactory. Upon the proof as it stands we cannot find that the petitioner's officers knowingly tolerated or encouraged the running of its steamers at excessive speed in fogs, or were negligent in failing to enforce the rules; certainly they used due diligence in securing officers of experience and ability. We concur in the conclusion that the disaster was "done, occasioned or incurred without the privity or knowledge of the owners."

7119 VII. It is contended that the ship was in actual violation of statutory rules as to equipment (life-boats, floats, rafts, life-preservers, boat-disengaging apparatus, etc.).

We do not think it necessary to add anything to the opinion of the District Judge on this branch of the case. Counsel for one of the claimants criticizes the statement that it was admitted in the District Court that Section 4493, U. S. Rev. Stat., is

not applicable. Whether or not there was such an 7120
admission is unimportant, since Section 4400 expressly declares that "vessels of other countries," which "The Bourgogne" was, shall not be subject to the provisions of Section 4493.

VIII. In view of the findings above set forth, there was no error in overruling the exception to so much of the Commissioner's Report as found that the S. S. White Dental Company had no claim.

Various minor questions as to admissibility of 7121
evidence, etc., need not be discussed here; we concur with the District Court in the disposition made of them.

The decree is reversed and the cause remitted to the District Court for modification in accordance with this opinion. Inasmuch as both sides appealed and neither prevailed as to all the points argued, there should be no costs of this appeal.

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MOTION THAT COURT DECLINE TO PROCEED.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

7125 In the Matter of the Petition

of

THE COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "Bourgogne," for Limitation of Liability and other relief,

GEORGE DESLIONS & AL.,
Appellees.

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This matter coming before the Court on this 14th day of December, 1905, for argument of the appeal taken by the petitioner in reference to the claims reported by the Commissioner;

And this Court having, in its opinion filed in August last, stated as to the limited liability fund in this proceeding that one of the questions presented on the appeal was as follows: "Should not the petitioner be compelled to pay to the Trustee the fol-
7127 lowing sum, namely, the freight and passage money received by the petitioner for the passage from New York to Havre;"

And the Court in that opinion having further said: "We are of the opinion that the petitioner should pay over to the Trustee 100,703.08 francs, being prepaid passage money, and 12,716.43 francs, being prepaid freight, New York to Havre, aggregating 113,419.57 francs, with interest from the date of the disaster;"

Now the proctors for the appellees on this appeal present to this Court the certificate of Thomas Alexander, Trustee in this proceeding, dated this day, that no part of the said sum has been paid to him as Trustee by the petitioner ; 7128

And, as it appears that the Court has not the possession of the Limited Liability fund, and as the Supreme Court of the United States has decided that "in order to proceed regularly the Court must have possession of the Limited Liability fund," the Court would hold that proceeding in this matter in the present situation of the matter would be irregular; 7129

The said proctors for appellees move, therefore, that the Court decline to proceed with the hearing of this appeal.

Dated New York, December 14th, 1905.

BENEDICT & BENEDICT,
Proctors for Appellees.

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7132 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of the Petition

of

LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship
7133 "La Bourgogne," for Limitation of Liability.

I, THOMAS ALEXANDER, Trustee, appointed in the above entitled proceeding, do hereby certify that with the exception of a life-boat and raft, no money or property has been delivered to me in the above entitled proceeding.

New York, December 14th, 1905.

7134 THOMAS ALEXANDER,
Trustee.

Extract from the Minutes.

7135 Thursday, December 14, 1905.

Matter of "La Bourgogne." W. L. & C., No. 6.

Appeal from U. S. District Court, Southern District of New York.

Mr. R. D. Benedict, for appellees Deslions, *et al.*, moves that the Court decline to proceed with the hearing of the appeal. The motion papers were handed up, and notwithstanding the motion the Court orders the cause to be heard.

SECOND OPINION OF THE COURT. 7136

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 6. October Term, 1905.

Argued December 14, 1905.
Decided February 22, 1906.

In the Matter of the Petition 7137

of

LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "La Bourgog " for Limitation of Liability,

Appellant.

GEORGE DESLIONS, *et al.*,

Appellants. 7138

Appeals from the District Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe and Coxe.

The principal questions, relating to the right of the petitioner to limit its liability, were decided by this Court in June, 1905 ("*La Bourgogne*," *139 Fed. Rep., 433*).

A commissioner was appointed by the District Court to take testimony as to the amounts due the various claimants who had filed claims, other than those for loss of life, and report the same to the Court. The commissioner made the following 7139 awards:

To Pauline Henuy, as administratrix of Juliette Cicot, deceased, $2,802, for loss of money and personal effects.

To Henry Hyer Knowles, as administrator of Gertrude Lalla Roukh Knowles, deceased, $2,000, for loss of personal effects.

To William C. Perry, as administrator of Kate M. Perry, deceased, $5,277.50, for loss of money and personal effects.

7140 To William C. Perry, as administrator of Florence Perry, deceased, $1,050, for loss of money and personal effects.

To William C. Perry, as administrator of Sadie Perry, deceased, $1,050, for loss of money and personal effects.

To John Perry, as next-of-kin of Katherine Perry and Albert Perry, deceased, $350, for loss of personal effects.

To Lewis Delfonti $432, for loss of personal effects and for damages for personal injuries.

7141 To Henri Cirri, $1,018, for loss of personal effects and as damages for personal injuries.

To George Deslions, $25,000, for loss of property.

Exceptions were duly filed to this report, but the same were overruled by the Court and the report of the commissioner was confirmed. The action of the District Court in overruling these exceptions is not assigned as error. With the assent of the Court the consideration of this part of the petitioner's appeal was postponed until after the main

7142 question was decided, and, by an order of the Court made in August, 1905, was directed to be heard at the present term.

Upon the law, as declared in the former decision of this Court, the petitioner, La Compagnie Generale Transatlantique, has no pecuniary interest in this appeal, as the claims, including those for loss of life, are far in excess of the fund in Court.

The claimants have no controversy among themselves. Were it not, therefore, for the possible contingency that the law may be changed by sub-

7143 sequent proceedings the questions now argued would be wholly academic.

Edward K. Jones and Charles Haldane for the petitioner-appellant.

Robert D. Benedict for Deslions, claimant-appellee.

A Gordon Murray for Perry, Henuy, Knowles, Cirri and Delfonti, claimants-appellees.

E. M. Bullowa for Cirri and Delfonti, claimant-appellees.

COXE, *J.*: 7144

As the law now stands, the petitioner-appellant has no substantial pecuniary interest in the disallowance or reduction of the claim in controversy. Nevertheless, as there may be a contingent interest, we have felt constrained to consider and pass upon all the questions presented.

The Deslions claim is the largest in amount and was the one most strenuously opposed in the District Court. It may, therefore, be appropriately considered first. 7145

The claim was for $50,000, the valve placed by the owner, Deslions, upon a collection of Indian curios. The commissioner allowed $25,000, and, after careful consideration of the testimony, we do not feel justified in disturbing his conclusion.

It must be admitted that Deslions does not appear well on paper; he is involved in numerous contradictions and divigations; professing ignorance of matters which should be within his knowledge and failing to remember facts which it seems incredible he should have forgotten. Indeed, portions of his testimony evince such recklessness and are so obviously prejudicial to the success of his claim that it seems as if his conduct must be attributed to other causes than those suggested by the petitioner—possibly to an excitable French temperament or to ignorance of our methods of procedure. Many of his lapses of memory and flippant answers were given when being interrogated regarding matters so clearly collateral that he could have answered fully and truthfully without in the least endangering his claim. 7147 His failure to do so seems hardly compatible with a deep-laid scheme of perjury. May it not rather be attributed to some form of mental aberration not easy to characterise from a mere perusal of the printed record? It is possible that if the examination were had before the Court we might be inclined to discredit his testimony, but the commissioner who saw and heard him during the 169 folios of direct and 541 folios of searching cross-examination 7146

7148 evidently did not think him a perjurer. On the contrary, the commissioner gave credence to the salient facts testified to by him and differed with him only as to the value of the property lost, believing, as we do, that an exaggerated value had been placed upon the collection. The fault of the claimant in making this valuation was, perhaps, a venial one, considering the character of the curios, the fact that many of them were rare and impossible to duplicate and that he had spent years in collecting them. Regarding many of the articles he is cor-
7149 roborated as to their rarity and value of experts having extensive knowledge of the subject and whose character and ability give additional weight to their opinions.

The question is not what the conclusion of this Court should be on the testimony, but whether the commissioner's report, sustained, as it was, after full argument, by the District Court, was so clearly erroneous as to warrant us in setting it aside.

The powers conferred upon a commissioner in
7150 admiralty causes are analogous to those of masters in chancery and his findings upon questions of fact depending upon conflicting testimony or upon the credibility of witnesses should not be disturbed unless clearly erroneous.

Davis v. *Schwartz*, *155 U. S., 631, 636; Tilgman* v. *Proctor*, *125 U. S., 136, 150; Kimberly* v. *Ames*, *129 U. S., 512, 524; The Elton*, *83 Fed. Rep., 519*; *The Cayuga*, *59 Fed. Rep., 483; Panama*
7151 *R. Co.* v. *Napier Co.*, *61 Fed. Rep., 408.*

We are not satisfied that the report is so clearly against the weight of evidence as to justify us in disturbing it.

The bulk of Deslions' property had no market value in the usually accepted sense: its salableness depended upon finding a purchaser of means interested in Indian curiosities. No part of it was ever

in Havre; it was sunk in mid-ocean. From the na- 7152
ture of the case expert opinion could only be obtained in this country, and under the rule established in the *Umbria, 59 Fed. Rep., 489*, the value in New York, the place of shipment, was properly shown as the measure of damages.

There is no doubt whatever that eight boxes belonging to the claimant and aggregating 2,380 pounds in weight were placed on the "Bourgogne" the morning she sailed from New York and that he paid about $40 for their transportation to Havre as 7153
extra baggage. The testimony of the claimant and the petitioner's agent, who was at the pier on the morning in question, leaves little room for doubt as to the nature of the agreement.

There was nothing unusual in taking on large quantities of extra baggage; it was frequently done for additional compensation. That the petitioner's agent knew all the important facts regarding the boxes, except the nature and value of their contents, is shown by his own testimony. It is not pretended that the boxes were shipped as freight; they could 7154
not have been so shipped under the company's rules and no bill of lading was issued.

These being the facts proved by the testimony and found by the commissioner, we do not think the claimant should be defeated by the application of the strict rules of common law pleading. If necessary an amendment should be made conforming the pleading to the proof. Knowing precisely what the transaction was, it should be dealt with on that basis, irrespective of the fact that the claimant may 7155
have stated the claim incorrectly in the informal preliminary statement filed by him.

The commissioner finds that the boxes in question went aboard the ship as a part of the baggage of the claimant's wife and that he is entitled to recover the value thereof. The claimant's wife was a passenger having a third-class ticket. It is objected that the loss of the baggage must be limited to the amount stipulated in the "conditions of passage" printed

7156 on the ticket. It is sufficient at present to say that no third-class ticket is in evidence and it is obvious that the court cannot construe the conditions of an agreement without knowing what those conditions are. So far as the Deslions claim is concerned, it is enough to say:

First. That there is no evidence, except the oral testimony of one witness, as to the conditions of third-class tickets in July, 1898.

7157 "Second. Assuming that the conditions referred to by M. de Bocande were printed on the third-class ticket in question, they do not and cannot apply to extra baggage taken under a subsequent agreement, the price charged for transportation having been duly paid.

Third. If the limitation, as stated by de Bocande, was $30, it was grossly inadequate.

To limit the liability for the loss of 2,360 pounds
7158 of baggage, for the transportation of which the company had received $40, to the sum of $30 is so obviously unreasonable that further comment is unnecessary.

Before proceeding to the examination of the remaining claims it is wise to consider some of the contentions which are applicable to all.

The first-class passage ticket tendered by the petitioner as representative of the tickets in use in July, 1898, has printed on its face in English, among other conditions, the following:

7159 "III. Baggage and valuables may be insured at the current rate on the company's open policy.

"IV. The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for money, species, securities, jewels and articles of value, unless they have been declared and taxed as valuables and deposited with the Purser against a receipt delivered by him.

"V. In case of damage to or total loss of bag- 7160
gage, for which the Company or the Captain may be responsible, the liability is not to exceed $100 dollars in first class, and 60 dollars in second class, regardless of the number of pieces or their contents, *as the passengers should have their baggage insured for its full value on the Company's open policy.*"

M. de Bocande, general agent of the French Line, at the time of the loss of "La Bourgogne," produced this ticket at the hearing of January 10, 7161
1902, as a form in use in July, 1898. It must have been printed after the disaster, as the Company's New York office was then at "No 6 Bowling Green," the removal to "32 Broadway," which is printed on the ticket as the New York office, having taken place after the loss of the "Bourgogne."

Asked if the ticket produced is the form that was in use at the time of the disaster, M. de Bocande answered:

"This is the shape of the ticket. 7162

"Question. Is it the form of the letters? Answer. The same exactly, I think.

"Question. You don't mean to say there have not been changes? Answer. I don't know. * * *

"Question. I understood you to say that the second class tickets were substantially in the same form? Answer. The same form and red in color; that is all; third class, green."

Again, on cross-examination, the witness gave the following testimony: 7163

"Question. Is that the same form that was in use in 1898? Answer. I suppose so. I don't think there was any other form of ticket in use in 1898. Except as to color of ticket, the same form was in use in all classes of passage.

"Question. Did all of the three different shades of tickets have all of the stipulations printed on the face of them? Answer. They have all the same except for baggage indemnity; the amount of in-

7164 demnity for baggage varies with the price paid for the passenger, first, second and third. I think it is $100.00 for first class and $60 00 for second and $30.00 for third class. All the other clauses are the same to my knowledge.

"Question. Did all the tickets have the stipulation printed on the face of the ticket? Answer. This way, to my knowledge.

"Question. That is, you mean all the tickets sold here in New York for Havre? Answer. Yes."

7165 On the other hand, Mr. A. Gordon Murray, counsel for claimants, but in 1893 a clerk in a law office in the City of New York, called at the office of petitioner at No. 6 Bowling Green and had an interview with R. Faguet, the agent in charge at the time. Mr. Murray testified as follows:

"I requested Mr. Faguet to show me the form of the ticket used. He did so, and the ticket was a square pink ticket with stipulations printed on the back, with no reference made to the stipulations on the face of the ticket. He wouldn't allow me to 7166 take one of them with me."

On cross-examination he said:

"I don't recollect the class. I know it was a pink ticket, but I made a copy of it, which was in French, but the copy I have not been able to find in the last eighteen months, although I have looked high and low for it."

He further stated that he was not sure whether the ticket shown him by Faguet or another ticket shown him about the same time by another person about to embark for Havre was in French, but fur- 7167 ther on, his recollection being refreshed, he said that the Faguet ticket was in English. He is positive, however, that the stipulations were printed on the back of the ticket.

John M. Perry, whose wife and children were lost on the "Bourgogne," and who purchased their passage ticket the day before the steamer sailed, testified that his recollection was that the ticket was printed in French and that his attention was not

called to any stipulation limiting the petitioner's 7168
liability.

The commissioner carefully reviewed all the testimony and found as a fact that whatever conditions where attached to the passage tickets were printed on the back, and that no one representing the petitioner called the attention of the holders of the tickets to the conditions on the back and that there is no proof that the passengers read the conditions. He also finds that the petitioner has failed to prove that the ticket in evidence was the form issued to 7169
the passengers on "La Bourgogne."

It certainly was in the power of the petitioner to set this question at rest by producing the identical form used in 1898 and its failure to do so raised a presumption in favor of the claimant's contention. It may be that, somewhere in the 2,000 pages of this record, a sufficient reason is given for the failure to produce this proof; if so, we have been unable to discover it.

The carrier asks for a strict construction against the passenger of the conditions of a contract upon 7170
proof which leaves the nature of those conditions in doubt.

The commissioner having found the fact in favor of the claimants, we do not feel justified in disturbing his conclusion, for the reasons heretofore stated when considering the Deslions claim.

The law in such circumstances is plain. The following section from Wheeler on the Modern Law of Carriers, p. 263, is cited with approval of the Supreme Court in *The Majestic, 166 U. S., 375, 384:* 7171

> "A notice or memorandum, even though printed upon the bill of lading or other contract of the carrier, unless referred to in the body of the contract and thus made a part of it, is no more than a notice, and does not form a part of the contract between the shipper and the carrier."

7172 The Harter Act is not applicable to the present situation.

This Court has decided in the case of the "Kensington," 94 Fed. Rep., 885, that the provisions of the second section of that act do not apply to passenger tickets.

We are also of the opinion that Section 4281 of the U. S. Revised Statutes is inapplicable.

In Wheeler *v.* O. S. N. Co., 125 N. Y., 155, the Court of Appeals gave careful consideration to the
7173 proper construction of this section and, at page 161, say:

> "But what the carrier and his customer might accomplish by special agreement, Congress could effect by statute in the absence of such agreement, but must necessarily leave the lesser liability of bailee unaffected if it merely removes the liability *as carrier*, and does not, by clear and definite language, indicate its purpose to go further. So much, and no more than that, the section under consideration accom-
> 7174 plished, for it distinctly removes the liability *as carrier* without touching that as bailee. We are bound to assume that the word 'carrier' was used in this recognized legal sense, and not in some loose or careless and merely colloquial way; and that, especially, because it occurs in connection with the idea of liability, and the phrase (liable as carrier) can only mean the liability attached by law to that public employment."

7175 We are fully in accord with this view.

See also as bearing on the question *Carlson* v. *Oceanic Co., 109 N. Y., 359; Calderson* v. *Atlas Co., 170 U S., 272; Fraloff* v. *N. Y. C. & H. R. R. Co., 100 U. S., 24.*

We have examined the testimony relating to the loss of property represented by the various claimants, and are of the opinion that it sufficiently warrants the findings of the Commissioner both as to

the character and amount of the property and its 7176
value.

To attempt an analysis of the testimony in each instance would unduly prolong this opinion and would serve no useful purpose.

The award of $250 each to Delfonti and Cirr is most conservative in view of the injuries they received and the suffering and privation occasioned by the sinking of the "Bourgogne."

That part of the decree which is involved in the present appeal is affirmed, with interest and costs. 7177

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7180 UNITED STATES CIRCUIT COURT OF APPEALS.

SECOND CIRCUIT.

Before Wallace, Lacombe and Coxe, Circuit Judges.

"LA BOURGOGNE."

7181 WALLACE, Circuit Judge (dissenting):

I cannot take the charitable view of Deslions' testimony, which seems to prevail with the majority of the Court. The testimony is so full of falsifications that it is utterly unworthy of credit. It is apparent throughout that he has been influenced by the motive of withholding any information that might afford an opportunity to the steamship company to expose the fraudulent and extravagant character of his claim. Rejecting his testimony, there is no competent evidence of the value of the property lost.
7182 The testimony of other witnesses does establish that some time prior to the shipment he had a collection of curios in his possession, and it may afford a basis for estimating the value of some part of them. It also shows that he packed some of his curios for shipment. What these were does not appear, nor does their value appear. He shipped a certain number of trunks, and the weight appears; but what was in the trunks and the value of the contents cannot be ascertained except by his testimony. He has chosen for his own purpose to destroy the value of
7183 that testimony, and ought not to be allowed a recovery from sympathy. The case is not one in which the Court should be controlled by the finding of the Commissioner. When a witness discredits himself twenty times over by his prevarications, and there is not any other competent evidence of the amount of his claim, the finding of a Commissioner allowing just half of it is purely speculative and ought not to have any influence with a reviewing Court.

Except as to the claim of Deslions', I concur in the opinion.

ORDER FOR MANDATE. 7184

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building, in the City of New York, on the 5th day of March, one thousand nine hundred and six.

Present: Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. ALFRED C. COXE, 7185
Circuit Judges.

In the Matter
of
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, Appellants, owner of the S. S. "Bourgogne," for Limitation of Liability. 7186
George Deslions, *et al.*,
Appellants.

Appeals from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed, that the decree of said District Court be and it hereby is reversed without costs and cause remanded to the District Court for modification in accordance with the opinion of this Court—except as to that part of the decree as to claims other than those for loss of life, and as to which the decree below is affirmed, with interest and costs. 7187

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

7188

ORDER ON MOTION FOR REHEARING AND INSTRUCTIONS ON INTEREST.

At a stated term of the United States Circuit Court of Appeals for the Second Circuit, held at the Court Rooms in the Post Office Building, City of New York, on the 12th day
7189 of April, 1906.

Present: Hon. E. HENRY LACOMBE,
Hon. WILLIAM K. TOWNSEND,
Hon. ALFRED C. COXE,
Judges.

In the Matter
of
LA COMPAGNIE GENERALE TRANSAT-
7190 LANTIQUE, owner of SS. "La Bourgogne." Petition for Limitation of Liability.

A motion having been made herein for a rehearing of the above entitled matter, and for instructions from the Court as to the rate of interest to be allowed on the recoveries decreed herein,

Upon consideration thereof it is

7191 Ordered, that the motion for a rehearing be and hereby is denied.

It is further ordered that interest be allowed at the rate of six per cent.

[Endorsed]—United States Circuit Court of Appeals. Second Circuit. Matter of "La Bourgogne." Order. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 12, 1906. William Parkin, Clerk.

7192

STIPULATON AS TO ADDITIONAL RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS.

In the Matter

of

The Petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "Bourgogne," for Limitation of Liability, and other relief. 7193

It is hereby consented that the additional record to be certified in this case for the presentation of the petition for a certiorari shall consist of the first opinion of the Circuit Court of Appeals, the papers on the motion that the Court should decline to pro- 7194
ceed until it had possession of the Limited Liability fund, the denial of that motion; the second opinion of the Court, and the order for mandate; and the order of the Circuit Court of Appeals on the motion as to the question of interest to be paid by the petitioner on the freight and passage money ordered to be paid in.

BENEDICT & BENEDICT,
Proctors.

A. GORDON MURRAY, 7195
Proctor for Perry and others.

EDWARD K. JONES,
Proctor for petitioner.

7196 [Endorsed]—UNITED STATES CIRCUIT COURT OF APPEALS. In the Matter of the Petition of the Compagnie Generale Transatlantique, owner of the S. S. "Bourgogne," for limitation of liability, and other relief. Stipulation as to record. Benedict & Benedict, proctors for Deslions et al., 68 Wall Street, New York, N.Y. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 19, 1906. William Parkin, Clerk.

7197

United States of America,
Southern District of New York, } ss.:

I, WILLIAM PARKIN, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages numbered
7198 from 2259 to 2294, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Petition of La Compagnie Generale Transatlantique, owner of S. S. "Bourgogne," as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of April, in the
7199 year of our Lord One Thousand Nine Hundred and Six, and of the Independence of the United States the One hundred and thirtieth.

WM. PARKIN,
Clerk.

[SEAL.]

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit entitled In the Matter of the petition of La Compagnie Generale Transatlantique, owner of the Steamship La Bourgogne, for limitation of liability and other relief, George Deslions *et al.*, appellants, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of May, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 20,253. Supreme Court of the United States. No. 751, October Term, 1905. George Deslions *et al.*, *vs.* La Compagnie Generale Transatlantique, Owner, &c. Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Jul- 28, 1906. William Parkin, clerk.

United States Circuit Court of Appeals, Second Circuit.

In the Matter of the Petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, Owner of the S. S. "Bourgogne," for Limitation of Liability and other Relief; GEORGE DESLIONS ET AL., Appellants.

It is hereby stipulated that the certified transcript of record herein, now on file in the office of the Clerk of the Supreme Court of the United States, may be taken as a return to the writ of certiorari ordered by the Supreme Court.

Dated New York, May 25, 1906.

R. D. BENEDICT,
Counsel for Petitioners for Certiorari.
EDWARD K. JONES,
Counsel for C. G. T.

Endorsed: United States Supreme Court. In the Matter of the Petition of the Compagnie Generale Transatlantique owner of the S. S. "Bourgogne" for limitation of liability and other relief. George Deslions *et al.*, Appellants. Stipulation that certified transcript of record be taken as a return to writ of certiorari. Benedict & Benedict, Proctors for Deslions *et al.*, 68 Wall Street, New York, N. Y. United States Circuit Court of Appeals Second Circuit. Filed Jul 28, 1906. William Parkin, Clerk.

To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the Clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and is hereby certified as a return to the writ of certiorari issued herein.

Dated New York, July 30, 1906.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

[Endorsed:] United States Circuit Court of Appeals, Second Circuit. Matter of La Bourgogne. Return to Certiorari.
293, 20253.

[Endorsed:] File No. 20253. Supreme Court U. S. October Term, 1906. Term No. 293. George Deslions *et al.*, Petitioners, *vs.* La Compagnie Generale Transatlantique owner &c. Writ of Certiorari and Return. Filed August 2, 1906.

Supreme Court of the United States,

OCTOBER TERM, 1906.

In the Matter

of

The Counter-Petition of La Compagnie Générale Transatlantique for a writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

Sirs:

Please take notice that the counter-petition for a writ of certiorari in behalf of La Compagnie Generale Transalatlantique in this cause, and brief in support of same, copies of which are herewith served on you, will be presented to the Supreme Court of the United States, at the opening of the Court on the 25th day of February, 1907, or as soon thereafter as counsel can be heard.

Dated New York, January 28th, 1907.

Yours, etc.,

WM. G. CHOATE,

EDWARD K. JONES,

Of Counsel for Petitioner.

To

Messrs. Benedict & Benedict,

Proctors for Deslions, *et al.*

and

A. Gordon Murray, Esq.,

Proctor for Perry, *et al.*

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1906.

In the Matter

of

The Counter-Petition of La Compagnie Générale Transatlantique for a Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

TO THE HONORABLE
THE SUPREME COURT OF THE UNITED STATES:

FIRST: Your petitioner, *La Compagnie Generale Transatlantique*, a corporation organized under the laws of France, presents this its counter-petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to cause to be certified to this Court for its review and final determination so much of the record in that Court in the matter of the petition of *La Compagnie Generale Transatlantique*, owner of the steamship *La Bourgogne*, for limitation of liability and other relief as relates to such matters as were determined by the said Circuit Court of Appeals *adversely* to your petitioner.

This proceeding is now in the Circuit Court of Appeals, though an order for a mandate of the Court of Appeals was issued on the 7th of March, 1906: but the same is not yet filed in the District

Court in which the proceeding was originally brought.

SECOND: Your petitioner alleges that on the 14th of May, 1906, a petition for a writ of certiorari was presented to this Court in behalf of one George Deslions, and others, to review the decree above mentioned, which petition was thereafter granted on the 21st of May, 1906, at the closing of the last Term of this Court.

THIRD: Your petitioner now asks leave to have brought up by writ of certiorari, and filed in its behalf such portion of the record as has not already been brought up and filed, and a consideration of and adjudication upon the errors of the Circuit Court of Appeals which were therein made, as your petitioner believes, against your petitioner's interests.

FOURTH: Your petitioner alleges that on the 4th of July, 1898, your petitioner being then the owner of the steamship *La Bourgogne*, which steamship was lost in a collision with the British ship *Cromartyshire*, on the high seas, about sixty miles off and to the eastward of Sable Island.

FIFTH: *La Bourgogne* had many first, second and third class passengers, and a general cargo of merchandise on board; and in consequence of the disaster, and of her loss, a large number of suits have been brought against your petitioner in many States and Districts of the United States in behalf of persons claiming damages for loss of life, and for other losses.

SIXTH: That on the 15th day of May, 1906, your

petitioner filed its petition in the District Court of the United States for the Southern District of New York for a limitation of its liability to the value of its interest in the steamship *La Bourgogne* and her pending freight, pursuant to the statute in such case made and provided; and, at the same time, your petitioner executed and delivered to a trustee appointed by the Court, as provided by law, an assignment or transfer, *of all its interest in the steamship and her pending freight.*

SEVENTH: That such proceedings were subsequently had as resulted, on the 22d of March, 1902, in a decree of the District Court by which it was *finally decided*, among other things, as follows:

> 1. That your petitioner duly transferred and surrendered its interest in the steamship *La Bourgogne* and her pending freight, and that such interest extended no further than the value of a lifeboat and liferaft, which the petitioner had fully surrendered to the trustee.
>
> 2. That your petitioner was entitled to a limitation of its liability, having complied with the law, to its interest in the steamship and her pending freight as to all causes growing out of the foundering of *La Bourgogne*, as by the statutes of the United States in such case made and provided.
>
> 3. That claims for damages for alleged negligence resulting in loss of life in the disaster were disallowed and excluded from consideration in the proceeding.
>
> 4. That the remnants of the steamship amounted only to one lifeboat and one liferaft.

5.That your petitioner was not required to surrender the prepaid freight and the passage money for the voyage, nor any freight or passage money on the voyage over from Havre to New York.

6. That *La Bourgogne* was solely in fault for the collision set forth in the pleadings.

7.That *La Bourgogne* had sufficient lifeboats, liferafts and proper boat-disengaging apparatus.

Upon this particular question the District Judge made no express finding in the decree, but in his opinion (fols. 3748-3755 inclusive of the record now on file), he held that the allegations as to insufficient lifeboats, liferafts and proper boat-disengaging apparatus were not proved.

His words are: "*These contentions of claimants are not proved.*"

Record, fols. 3748, 3755.

And these questions we say were *finally decided* by the District Court in the *first instance*.

8. It was also decided that all claims, other than those for loss of life, be referred to a Commissioner, to ascertain and report the same.

EIGHTH: That in the course of the proceeding before the Commissioner a large number of claims were presented for alleged damages for loss of life; and there were other claims made for loss of merchandise and baggage of passengers, and other personal effects. — —

NINTH: The decree having contained an order of reference to a commissioner to ascertain and determine the damages in respect of each particular claim, as above stated, resulted in his finding cer-

tain claims to be established; and thereupon on the 5th of May, 1904, the Commissioner reported the claims in detail to the Court, with his opinion thereon.

TENTH: Thereafter, exceptions having been filed to certain of the findings of the Commissioner, both by the petitioner and by one of the claimants, the District Court on the 30th of June, 1904, having made an order overruling all of the exceptions, and confirming the report of the Commissioner entered a further decree, *repeating* the findings and decree of the District Court of the 22nd of March, 1902, and by such repeition purported by readjudge among other things:

> 1. That your petitioner was entitled to a limitation of its liabliity for all causes growing out of the foundering of *La Bourgogne*, as by the statutes of the United States in such case made and provided, that is to say to the value of its interest in the steamship and her pending freight.
>
> 2. That all claims for damages for alleged negligence resulting in loss of life growing out of the disaster were disallowed and excluded from consideration by the Commissioner.
>
> 3. That La Bourgogne was solely at fault for the collision set forth in the pleadings.
>
> 4. That the petitioner duly transferred and surrendered its interest in La Bourgogne and her pending freight; and
>
> **5. Further, which was really the only matter then remaining before the Court.**
>
> That the petitioner was liable for damages caused by the collision to each of the claimants

whose claims had been reported upon by the report of the Commissioner so confirmed with the exception of the claim of the S. S. White Dental Company, which was disallowed.

ELEVENTH: That both decrees of the District Court and the report of the Commissioner appear by and are fully set forth in the record thereof, which was subsequently filed in the United States Circuit Court of Appeals, and appear in the record sent up to this Court in behalf of Deslions and others above referred to, to which your petitioner, for greater particularity, begs leave to refer.

TWELFTH: That the parties who had filed claims before the Commissioner, appealed to the Circuit Court of Appeals for the Second Circuit on the 20th of July, 1904, from parts of the decree of July 11th, 1904, as follows:

1. The disallowance of claims for loss of life.

2. The disallowance of the claim of the S. S. White Dental Company.

3. That the petitioner was shown to be within the Act exempting it from liability beyond the remnants of the wreck, and is entitled to limit its liability as specified therein.

4. That in the amount to which the liability of the petitioner was limited there was not included the freight or passage money received by the petitioner.

5. That the freight and passage money for the voyage of *La Bourgogne* from New York to Havre, during which the collision occurred, had not been included.

6. That no allowance had been made for the freight for the voyage from Havre to New York, for the preceeding voyage.

7. That the amount of money paid to the petitioner by the French Government for carrying the mails, under contract with the petitioner, for the voyage on which *La Bourgogne* was lost, had not also been included in whole or in part as part of the surrender value.

8. That the costs of the proceeding be divided.

9. That a perpetual injunction was contained in the decree against all parties.

THIRTEENTH: That on the 10th of June, 1905, your petitioner also appealed to the Circuit Court of Appeals for the Second Circuit from certain parts of this second decree of July 11th, 1904, as follows:

1. In holding the *Bourgogne* solely in fault for the collision.

2. In not holding the *Cromartyshire* solely in fault for the collision.

3. In not exempting the petitioner from all liability for any loss arising out of the collision.

4. In making awards to claimants thereunder, and over-ruling the exceptions of your petitioner to the report of the Commissioner.

5. In directing the petitioner to pay the costs of the proceeding as a condition of enjoining the further prosecution of suits brought against the petitioner.

FOURTEENTH: That these appeals were in due course brought on for hearing before the Circuit Court of Appeals; and that upon the hearing thereof it was claimed and insisted by your petitioner that

1. So far as the first decree of March 22nd, 1902, determined that your petitioner came within the provision of the Act limiting its liability to its interest in the ship and pending freight, and was entitled to limit its liability under the statutes of the United States, and

2. So far as it excluded from the consideration of the Commissioner all claims for loss of life, and

3. So far as it determined that your petitioner was not required to pay to the trustee the prepaid freight and passage money received on the voyage from New York to Havre, on which the steamer was lost, nor

4. On the voyage from Havre to New York, preceding the collision, nor any part of the amount of money received from the French Government for carrying the mails, it was a *final decree*, and that the Circuit Court of Appeals had no jurisdiction to review these questions.

Because the decision of these points was not revived by being repeated and included in the second decree of July 11th, 1904, from which decree said appeals were taken and prosecuted.

FIFTEENTH: On March 5th, 1906, the Circuit Court of Appeals entered a decree wherein and whereby it was adjudged and decreed that the decree of the District Court of July 11, 1904, should be reversed and the cause remanded to the District Court for modification in accordance with the

opinion of the Court, except as to that part of the decree of the District Court as to claims other than those for loss of life as to which it was affirmed.

SIXTEENTH: And by this opinion and decree of the Circuit Court of Appeals, certain questions in the case which had been determined in favor of your petitioner in the District Court were decided adversely to your petitioner; notably that

1. Claims for loss of life should be considered by the Commissioner although that question was not argued before the Circuit Court of Appeals, and the Circuit Court of Appeals declined to hear argument thereon.

2. That your petitioner is liable to pay into Court the prepaid freight and passage money for the voyage from New York to Havre upon which the steamship was engaged at the time of her loss.

3. That your petitioner is liable for interest at the rate of six *per cent.* upon said freight and passage money, wehreas, if deposited in the registry of the Court it would only earn two per cent.

SEVENTEENTH: On April 12th, 1906, the Circuit Court of Appeals entered a further order denying to the petitioner a rehearing of the cause; but no mandate in accordance with the order or decree of that Court has yet been filed in the District Court of the United States for the Southern District of New York in which the case was originally instituted.

By reference to the opinion of the Circuit Court of Appeals, referred to, filed on the 23d of June, 1905,it appears that the Circuit Court of Appeals determined:

1. That the Circuit Court of Appeals had jurisdiction to hear and determine the questions claimed on the part of the petitioner to have been finally determined by the first decree of March 22nd, 1902, and that this decree of March 22nd, 1902, was not a final decree from which an appeal would lie in respect to such questions.

2. That the petitioner should pay over to the trustee the prepaid passage money and prepaid freight on the voyage from New York to Havre.

By a subsequent ruling the Court held that the rate of interest should be six *per cent.*, though, as stated, had the District Court ordered such payment the fund would have earned only two per cent.

3. That the petitioner was not required to pay to the trustee the freight and passage money for the crossing on the preceding voyage from Havre to New York.

4. That the petitioner was not required to pay any part of the money received from the French Government for carrying the mails.

5. That the claims for alleged damages for loss of life should be included in the claims considered by the Commissioner.

6. That the *Bourgogne* was in fault for the collision.

7. That the petitioner should be granted a limitation of its liability to its interest in the vessel and pending freight.

8. That the disaster occurred without the privity or knowledge of the owner of the *Bourgogne*.

9. That there was no error in disallowing the claim of the S. S. White Dental Company.

10. That there was no error in allowing the other claims for loss of property.

EIGHTEENTH: The District Court and the Circuit Court of Appeals differed as to whether or not claims for loss of life resulting from negligence on the high seas and out of the jurisdiction of any particular State, should be included among the claims to be considered by the Commissioner.

The question of ship owner's liability in such case, your petitioner avers, has been rule upon variously and with opposite views by the Courts of the United States.

In the Circuit Court of Appeals for the Seventh Circuit, it has been held that a ship owner is *not* liable.

Rundell vs. La Compagne Generale Transatlantique, 100 Fed. Rep., page 655.

But in the Circuit Court of Appeals for the Second Circuit, in the judgment which your petitioner prays now to have reviewed in this as well as in other respects, a different ruling was made.

La Bourgogne, 139 Fed. Rep., 433.

NINETEENTH: Your petitioner alleges that various other questions arose and were ruled against your petitioner and appear upon the record in the said cause, to which it does not deem it necessary particularly to refer in this petition in full detail, but prays leave to assign error as to the same at the final argument.

The principal questions which arise, however, are as follows:

1. The petitioner having transferred its interest in the vessel to a trustee appointed by the Court, pursuant to the statute, is it subject to any further liability, or could its right to the limitation provided by the statute be further questioned in this proceeding, the statute (R. S. Sec. 4285) declaring that from and after such transfer all claims and proceedings against the owner *shall cease*.

2. Was the first decree of the District Court of the 22d of March, 1902, a *Final Decree* within the meaning of the statute allowing appeals to the Circuit Court of Appeals in the particulars above enumerated, and had the Circuit Court of Appeals jurisdiction to hear and determine the matters.

3. Is and was the petitioner required to pay into Court the prepaid freight for the voyage from New York to Havre on which the steamship was engaged at the time of the disaster therein mentioned?

4. Is and was the petitioner required to pay interest at the rate of *six per cent.* per annum on the prepaid freight and passage money from the day of the disaster; the District Court having decided that such prepaid freight and passage money should not be paid in, and that the petitioner was *not* liable for the same in any case.

5. Is and was the petitioner liable for loss of life on the high seas, and out of the jurisdiction of the United States, or any particular State, and should such claims be considered by the Commissioner?

6. Were the several awards to the claimants by the Commissioner proper awards of damage; and

7. Especially in the case of *George Deslions*, in which there was a disagreement among the Judges of the Circuit Court of Appeals.

This point was duly raised by the exceptions to the Commissioners report filed by the petitioner.

Petitioner's Exceptions First, *et seq.* Record, fols. 3930, *et seq.*

8. Is the limitation of liability to One hundred dollars ($100.00), contained in the contract of passage of your petitioner, for loss of baggage and personal effects, a good and valid limitation of liability in law?

This point was also duly raised by exceptions to the Commissioner's report.

Thirty-second Exception, Record, fol. 3944.

The provisions of the contract of passage in the several classes, first and second, are printed on the face of the passage contract or ticket underneath the name of the passenger, and are as follows:

CONDITIONS OF PASSAGE.

"II. Each adult is entitled to a free allowance of baggage of 300 pounds or 20 cubic feet. Overweight to be charged at the rate of 40 cents for every additional 20 pounds or fraction of same. Baggage remaining unclaimed on arrival of the steamer will be stored at the Custom House, at the owner's risk and expense. Passengers are earnestly requested to mark all their baggage with their full names and addresses.

III. Baggage and valuables may be insured at the Current Rate, on the Company's open policy.

IV. The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for money, specie, securities, jewels and articles of value, unless they have been declared and taxed as valuables and deposited with the Purser against a receipt delivered by him.

V. In case of damage to or total loss of baggage, for which the Company or the Captain may be responsible, the liability is not to exceed 100 dollars in 1st class and 60 dollars in 2nd class, regardless of the number of pieces or their contents as the passengers should have their baggage insured for its full value on the Company's open policy."

The provisions of the *third* class ticket are identical with the above, except that the liability is limited to *Thirty dollars.*

And printed in large type at the bottom of each ticket, first, second and third class, is the following provision:

"On taking his or her ticket the passenger expressly agrees to and accepts all the foregoing conditions.

TWENTIETH: Your petitioner further alleges that when the appeals above mentioned came on to be heard before the Circuit Court of Appeals, that Court directed the cause to be argued in the first instance upon the question of the claim of your pe-

titioner to a limitation of liability, and the oral argument was limited to that question.

The printed briefs prepared before such direction and submitted by your petitioner to the Court, contained argument on some other questions, but no argument, oral or by brief, was had in behalf of your petitioner before that Court on the question whether claims for loss of life should be included in the losses for which your petitioner was liable.

TWENTY-FIRST: The Circuit Court of Appeals, however, in its opinion, determined this question as above stated, overruling in this respect the District Court, and refused to follow the U. S. Circuit Court of Appeals for the 7th Circuit in Rundell v. Comp, etc., 100 Fed. Rep., p. 655.

Thereupon your petitioner made a motion for a rehearing, asking especially to be heard on this question. But this motion was denied.

Record, fol. 7188, *et seq.*

TWENTY-SECOND: Your petitioner therefore prays that this Honorable Court may issue a writ of certiorari to bring up its review and decision such portion of the record of the said Circuit Court of Appeals as has not been presented and submitted to the Court in behalf of said claimants; and on the final hearing of the same your petitioner prays the hearing by and consideration of the Court of the errors above enumerated, and such other errors as your petitioner may assign at such final hearing.

TWENTY-THIRD: Your petitioner also prays that the rule in respect of the filing of the record in cases of applications for writs of certiorari may be dispensed with as far as the claimants have made and

filed the same in their behalf and that upon the present application the record in behalf of your petitioner may be limited to such matters as are not included in the record already filed by the claimants; and that on the final hearing your petitioner may resort to and use the record already filed.

La Campagnie Generale Transatlantique.

By Paul Faguet,
~~La Campagnie Generale Transatlantique~~
General Agent for the U. S. and Canada

WM. G. CHOATE,
EDWARD K. JONES,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1906.

In the Matter

of

The Counter-Petition of La Compagnie Générale Transatlantique for a writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

Brief in Support of Counter-Petition for a Writ of Certiorari.

This is a counter-petition for a writ of *certiorari* to review such portions of the record in the above matter as may have been omitted from the record filed in behalf of George Deslions, *et al.*, on an application for a writ of certiorari filed in this Court on the 14th of May, 1906, and granted on the 21st of May, 1906; and for the consideration by this Court of the errors which the present petitioner may allege to have been made by the Circuit Court of Appeals for the Second Circuit against its interests, as the same are set forth in the petition and to review such other further errors as may be assigned on the argument of the cause.

This application is made pursuant to the decision by this Court in the case of *Hubbard vs. Todd*, 171 *U. S.*, 474, in which it was held that, on the hearing of a case, brought by *certiorari* from a Circuit Court of Appeals on petition of one of the parties, in which the judgment of that Court is made otherwise final, this Court will pass only on the errors assigned by the petitioner, and will not decide whether there was error in the decree of the Court of Appeals, as to which the other party might have complained.

Hubbard vs. Todd, 171 U. S., 474.

The present counter-petition is intended to relieve the petitioner from the embarassment which might otherwise follow in case an affirmative counter-petition were not made in its behalf.

Facts.

The facts stated in the petition of Deslions, and others, may, for the purposes of the present application, be assumed to be true, though many of them may be controverted, and will be controverted, at the final hearing.

The present petitioner desires that this qualification shall be well understood.

The case is based on a proceeding in the District Court of the United States for the Southern District of New York, and relates to the facts attending the collision of the French steamship *La Bourgogne* with the British ship *Cromatyshire* on the high seas, about sixty miles off, and to the eastward of, Sable Island, on the 4th of July, 1898.

The case in the District Court for the Southern District of New York, and subsequently in the Circuit Court of Appeals for the Second Circuit, was

under a petition for a limitation of the liability of La Compagnie Generale Transatlantique to its interest in the *Bourgogne* and her pending freight.

See Paragraphs Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth and Twentieth of the Petition.

FIRST POINT.

Under the Revised Statutes of the United States (Sections 4283, 4284, and 4285 inclusive) which provide among other things, that when a petitioner for a limitation of his liability to the value of his interest in a vessel and her pending freight transfers such interest to a trustee, all claims and proceedings against the owner shall cease, your petitioner was exempted from further litigation.

The petitioner, instead of giving a stipulation for value, made a *transfer of its interest* to a trustee appointed by the Court. After such transfer the petitioner contends, as the statute provides, that it was no longer liable to any further proceedings, and that whatever interest it had in the *Bourgogne* and her pending freight was vested in the trustee, namely, its interest consisted of the

life-boat and life-raft mentioned, which were the only remnants of the ship saved; and the petitioner claims that from and after such transfer the petitioner was relieved of further litigation, claims and proceedings.

Without going into any argument of this question, the petitioner rests this point, for the purposes of the present application, upon the express provision of the Statute above quoted. At the final hearing the question will be fully argued.

SECOND POINT.

The decree of the District Court of the 22d of March, 1902, was a final decree, as stated in the seventh paragraph of the petition, and the subsequent appeal made by the claimants to the Circuit Court of Appeals, as stated in the twelfth paragraph of the petition, was too late, more than six months having expired from the rendition of the original decree, and therefore, the Circuit Court of Appeals had no jurisdiction to hear such appeal, so far as the decree of March 22, 1902, determined that the petitioner was entitled to a limitation of its liability, and other matters therein finally disposed of.

The decree of Judge Townsend in the District Court of the 22d of March, 1902, and referred to in

the Sixth paragraph of the present petition, was a *final* decree in respect of every question in the cause, except as to the respective amounts which the claimants might have determined in their favor as damages recoverable against the remnants of the ship surrendered to the trustee; and such claimants could only have recourse to the *fund in Court*, to be ratably distributed among them; and they should have, in order to effectively obtain a review of the decree referred to, taken an appeal within the statutory period of six months instead of, as shown in the Eleventh paragraph of the present petition, waiting until the determination of these claims before appealing to the Circuit Court of Appeals.

The decree of March 22d, 1902, was *final*, within the meaning of the statute (26 St. at L., Ch. 527, Sec. 11) and no appeal was effected within the time thereby limited.

It disposed of *every question arising upon the pleadings*, and nothing was left except to execute it.

Whatever subsequent steps were necessary related only to the ascertainment of the respective claims.

The principles upon which this frequently recurring question must be decided have been the subject of many judicial opinions.

We cite the following (italics ours):

> "A decree which orders a judicial sale of specific property, under which the title may pass beyond the control of the Court, is *final*, and it cannot be reviewed, unless it is challenged by a direct appeal from it, although it contains a provision referring the case to a master to state the account between the parties *preparatory to the application of the proceeds and the adjudication of the costs.*"
>
> Chase vs. Driver, 92 Fed. R., 780.

THIRD POINT.

Decisions illustrating final decrees.

A decree is *final* for the purposes of the appeal *when it terminates the litigation between the parties on the merits, and leaves nothing to be done but enforce by execution what has been determined.*

Therefore,

A decree, by way of illustration, determining that a railroad company must carry the express matter of an express company at reasonable rates, is final, *for the purpose of an appeal,* even though accounts remained to be settled, *and a reference would be necessary for that purpose. All such matters relate to the administration of the cause, and are mere incidents of the main litigation.*

St. Louis, I. M. & S. R. R. Co. vs. Southern Exp. Co., 108 U. S., 24.

M. K. & T. Ry. Co. vs. Dinsmore, *Ibid.*, 30.

"The controversy related to the ownership and transfer of 204 shares of the stock of the Memphis Gaslight Company, and to the rights of the parties under contracts relating to the purchase, sale and transfer of the stock.

"The decree directed that Dean, the defendant below and appellant here, transfer forthwith upon the books of the company one hundred and ninety-four shares of the stock to one of the plaintiffs below, who are appellees here, and ten shares to another. It directed further that account be taken and stated as to the amount paid and to be paid for the stock, and as to dividends accrued, and to be credited under the contracts between the parties."

The Court said (p. 345):

"So far as the Court below was concerned, the decree in the case determined *the principal matter in controversy* between the parties. And since the decree could not be changed except through a new and distinct proceeding, *it determined that matter finally.*

"Why, then, must it not be regarded as a final decree within the meaning of the acts of Congress providing for appeals?"

Held, a *final decree.*

Thomson vs. Dean, 7 Wall, 342.

The Washington, Georgetown and Alexandria Railroad Company filed a bill to enjoin the Bradleys from selling certain property conveyed to them as trustees by the Railroad Company.

An injunction was granted.

Subsequently a decree was entered "which ordered that the injunction be dissolved, and directed a sale by the Bradleys, the trustees of the property in controversy, according to the deed of trust, and *the bringing of the proceeds into Court* to abide further orders."

Held, a *final decree* on the authority of Thomson vs. Dean, 7 Wall., 342.

Railroad Co. vs. Bradleys, 7 Wall., 575.

In Bronson vs. R. R. Co., 2 Black, 531, this Court said:

"This decree is not final in the strict technical sense of the word, for something yet remains for the Court below to do. But, as was said by Chief Justice Taney, in Forgay *et al.* vs. Conrad, (6 How., 203), 'this Court has not theretofore understood the words "final decrees" in this strict and literal sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one

more consonant to the intention of the legislature.' "

Bronson vs. Railroad Co., 2 Black, 531.

In Forgay vs. Conrad, 6 How., 201, the Court held that a decree setting aside conveyances of lands and shares and directing restitution was *final*, although it directed an accounting by a Master and retained the bill "for further decree in the premises."

Forgay vs. Conrad, 6 How., 201.

A decree of foreclosure directed the sale of the mortgaged property to which two mortgage trustees made conflicting claims, and reserved for future consideration the question of the distribution of the proceeds of the sale. Held, *a final decree.*

Bank vs. Shedd., 121 U. S., 84, 85.

In a suit in equity to compel a transfer to the complainant of certain shares of stock, the bill was dismissed as against certain defendants and relief denied "upon all matters and things in controversy," except a certain specified matter.

As to that matter, the case was retained and referred to a Master in Chancery. The date of this decree was June 8, 1885.

The Master in Chancery took testimony and reported, and on July 14, 1887, the Court confirmed the report, decreed that the Chicago and Evanston R. R. Co. pay complainant $6,513 with interest and costs, denied all other relief and dismissed the bill against the remaining defendants for want of equity with costs.

From this latter decree the complainant appealed.

Held, that the decree of June 8, 1885, was a *final decree*, and the errors assigned which related to

it, *could not be considered upon an appeal* from the decree of July 14, 1887.

Hill vs. Chicago & Evanston R. R. Co., 140 U. S., 52.

> "If an appeal had been taken * * * and the decree had been affirmed, the Court below would have had nothing to do but to execute the decree which it had already entered. What remained to be done was merely in execution of what had been determined, such as the collection of the outstanding payments, settling the receiver's accounts, payments of costs, and the like; and this is no less so because some other creditor might turn up, and seek to come in under the decree. *The bringing of the fund into Court was for the final distribution as decreed, and not to be held pending the ascertainment of the principles upon which it should be distributed.*" Per Fuller, C. J., in
>
> Hoffman vs. Knox, 50 Fed. R., 484, 489.

A minority of the stockholders of the Winthrop Iron Company filed a bill in equity to set aside as fraudulent a lease made by the Iron Company to the Winthrop Hematite Company, and to have a receiver appointed to take possesion of the property of the company and manage its affairs. A decree was entered setting aside the lease and appointing a receiver. The Iron Company, the Hematite Company, and the defendant directors, were ordered to surrender to the receiver all the property of the Iron Company. The decree further ordered an accounting before a master by the Hematite Company, and the defendant directors, of the profits of the leased property, and of royalties on mines. Held, a *final decree*, "on all matters within the pleadings."

"The case is altogether different from suits by

patentees to establish their patents and recover for the infringement. There the money recovery is part of the subject matter of the suit. Here it is only an incident to what is sued for."

This answers Judge Lacombe's illustration in his opinion (Record, fol. 7064).

Winthrop Iron Co. vs. Meeker, 109 U. S., 180.

A decree determining the priority of lienors and creditors, directing the sale of the property affected, and the bringing of the proceeds into Court is *final*, for the purpose of appeal; and is none the less so that the Court retains the fund in controversy, for the purpose of distributing it as decreed.

Lewisburg Bk. vs. Sheffey, 140 U. S., 445.

An order appointing a special master to examine and distribute the contents of a trunk, returning some of such contents to the Court for further disposition.

> "The record states that the order was preliminary, but, of course, this is not effectual, as it is for this Court, and not for the Circuit Court, to determine that question in all cases, and the determination is to be governed by the essence of what is done and not by the appellation given to it."
>
> Potter vs. Beal, 50 Fed Rep., 860 at p. 863.

Held, *final*, for the purpose of appeal.

Potter vs. Beal, 50 Fed. R., 860.

In a suit for specific performance of a contract to convey lands the decree directed the conveyance "the form and terms of the conveyance to be approved or changed on further directions by one of the judges of this Court."

Held, *a final decree,* leaving nothing to be done except to carry it into execution.

Held, also, not reviewable on appeal from a subsequent decretal order, made more than a year later settling the terms of the conveyance.

Long vs. Maxwell, 59 Fed. R., 948 (C. C. A., 4th Circuit. Opinion by Fuller, C. J.).

Decree in partition, where the sole issue was partition in specie, or sale, which determines such issue, *is final;* notwithstanding the case is kept open for purposes of sale by a master and distribution of proceeds.

East Coast Cedar Company vs. People's Bank, 111 Fed. R., 446.

The Court by its decree dated February 24, 1897, settled the rights of riparian owners in the waters of Beaver Pond Creek, but retained the cause for purpose of ascertaining whether the decree was violated by the defendant, and appointed a master to conduct the investigation. Such an investigation was had, and the master found that the defendant had not violated the injunction, and a decree was thereupon entered dismissing the proceedings against the defendant with costs.

Held:

That the *first issue was final, notwithstanding the retention of the cause and the subsequent proceedings.*

In the opinion the Court said:

"The main issue was clear, and that was whether the defendant company had the right to divert any of the water from its natural flow."

"The decree of February 24, 1897, was *final.* and conclusive as to such contention."

"The *merits* of the controversy between plaintiff and defendant were *disposed of* and *could not again be reopened*, except on appeal from *that* decree."

Sanders vs. Bluefield Mnf'g. & Imp. Co., 106 Fed. R., 587.

(Fuller, C. J., sat in this case.)

FOURTH POINT.

The original decree of Judge Townsend was final, and as no appeal was taken in time by Deslions, Perry, et al., that was the end of the case.

The proceeding in this case was commenced on the 15th of May, 1900, by the petitioner, under the provisions of Sec. 4283 *et seq.*, of the Revised Statutes of the United States, for the purpose of obtaining a judgment of the Court that the petitioner's liability to those who had suffered damage in consequence of the loss of *La Bourgogne* was limited to the value of the vessel and her pending freight.

The petition (Record pp. 6-32), after reciting the circumstances of the collision, the total loss of the ship and cargo, and that her pending freight amounted to nothing, except the value of one lifeboat and one liferaft (which was stated to be about one hundred dollars), prayed the appointment of a trustee, to whom the petitioner's interest in *La Bourgogne* and her pending freight might be transferred; the appointment of a commissioner to receive proof of claims; an injunction restraining the prosecution of any and all actions, &c., arising out of the said collision otherwise than in this pro-

ceeding, and judgment that the petitioner was not liable for any claims or demands in consequence of said collision, or if liable, that the petitioner be discharged therefrom.

On the same day the Court appointed Samuel H. Lyman, Esq., trustee to receive the transfer of the petitioner's interest in the vessel and freight "for all persons who prove to be legally entitled thereto" (Record, pp. 34, 35).

On the same day the petitioner executed and delivered a conveyance and transfer of said interest and freight to the trustee (Record, pp. 36-8).

On the same day the Court ordered that a monition issue citing all claimants to appear in this proceeding, answer the petition, and make proof of their respective claims before Thomas Alexander, Commissioner, and enjoining the prosecution of any and all other proceedings (Record, pp. 38-41).

A number of claims were filed with the Commissioner and in each and every case the complainant prayed that the commissioner appointed to receive claims, report to the Court that the sum claimed is due to the claimant, and should be allowed to him out of any fund deposited in the registry of the Court in the proceeding.

(Record, fols. 133, 142, 157, 160, 169, 180, 191, 201-2, 210-11, 219, 227).

The various claimants interposed answers to the petition, in which by denials and affirmative allegations, they put in issue the right of the petitioner to limit its liability.

(Record, pp. 88-119.)

That was the only issue in the case.

Upon that issue thus joined, a large volume of testimony was taken, and on the 22d of March,

1902, the Court (Judge Townsend presiding) rendered a decree in which it disposed of *every question* within the pleadings.

(See Findings, Record, pp. 1265-6).

FIFTH POINT.

The subsequent repetition of Judge Townsend's decree by Judge Thomas did not revive the right to appeal from the original decree.

The original decree finally determined:

> First. That the petitioner was entitled to a limitation of its liability as provided by statute.
>
> Second. That no claims for loss of life could be allowed or considered by the Commissioner.
>
> Third: That the Bourgogne was to blame for the collision.
>
> Fourth. That the liability of the petitioner was limited to the value of one lifeboat, and one liferaft, which had been duly surrendered to the trustee.

And then, as a further matter that the claims (other than those for loss of life should be referred to a commissioner to take testimony and report thereon.

The Commissioner received testimony and reported.

(Record, pp. 1294-1301).

Various claimants who had proved their claims then served on the petitioner's proctor notice of a motion to confirm the report and for the entry of a final decree.

(Record, pp. 1312-15).

On the 11th July, 1904, the Court (Judge Thomas presiding) made a decree as follows:

(Record, pp. 1327-1330):

> Reciting the trial before Judge Townsend; the rendition of the decree of March 22, 1902; the proof of claims before the commissioner; the filing of the commissioner's report; the filing of exceptions thereto; the overruling of the exceptions; and the confirmation of the report, and,
>
> Adjudging—
>
> 1. That the petitioner was liable to the various claimants as reported by the commissioner (fols. 3967-3970).
>
> 2. That all the claims for loss of life be, "and the same are hereby disallowed and excluded from the consideration of the commissioner in this proceeding" (fol. 3971).
>
> 3. That the petitioner was entitled to limit its liability "to the amount of the value of the said steamer and her freight for the voyage, and that there is not to be included as going to make up said amount either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the contract proved between the

petitioner and said Government for the voyage on which the *Bourgogne* was lost."

4. That the costs of the proceeding be divided.

5. That on payment by the petitioner of the costs of any proceeding which was stayed by the temporary injunction, such injunction be made perpetual.

6. That all parties who had not commenced proceedings be permanently enjoined from doing so.

Endorsed on this decree is the following memorandum by Judge Thomas:

"This decree substantially follows the practice of both the Eastern and Southern Districts of New York as regards the question of an interlocutory judgment and is in other respects deemed correct."

The form and effect of these two judgments can be better illustrated by placing their cognate provisions in parallel columns, thus:

JUDGE TOWNSEND'S DECREE.	JUDGE THOMAS' DECREE.
That the prayer of the petitioner for a limitation of its liability for all losses, injuries, damages and other claims growing out of the loss or foundering of *La Bourgogne*, mentioned in the petition, be and the same is hereby granted as provided by the statutes of the United	That the petitioner is entitled to limit its liability for such damages as are decreed as aforesaid, to the amount of the value of the said steamer and her freight for the voyage (fol. 3971).

States in such case made and provided (fol. 3780).

That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and excluded from consideration in this proceeding (fol. 3781).

That the steamship *La Bourgogne* was in fault and to blame for the collision set forth in the pleadings in this cause (fol. 3781).

That the petitioner has duly trasnferred and surrendered its interest in the value of the said steamship *La Bourgogne* and her pending freight by the transfer heretofore made to the trustee appointed in this cause, and that the value of such interest extends no further than the value of the lifeboat and liferaft mentioned in the said pleadings, and which the said petitioner has duly

That all the claims which have been filed in this proceeding on behalf of persons claiming damages for negligence resulting in loss of life caused by said collision be, and the same are hereby disallowed and excluded from the consideration of the Commissioner in this proceeding (fol. 3971).

That the steamer *La Bourgogne* in the petition mentioned was in fault and to blame in reference to the collision in question, in that she was proceeding at an immoderate rate of speed in a fog, contrary to law (fol. 3966).

That there is not to be included as going to make up said amount either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre, during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the contract proved be-

surrendered to the said trustee (fol. 3782).

Refers all claims (except for loss of life) to the Commissioner, to take testimony and report (fols. 3781-2).

tween the petitioner and said Government for the voyage on which the *Bourgogne* was lost (fol. 3972).

Confirms the Commissioner's Report (fols. 3967-3970).

Directs method of taxing costs (fols. 3972-3).

Directs petitioner to pay costs of claimants in proceedings against petioner and thereupon enjoins such claimants (fol. 3974).

Enjoins parties who have not commenced proceedings from doing so (fol. 3975).

It will be observed that while Judge Townsend's decree is general in its terms, that of Judge Thomas goes into details, although Judge Thomas *did not try the case*, and did not know judicially of the existence of the facts recited in his decree. Judge Townsend found that "*La Bourgogne* was at fault and to blame for the collision." Judge Thomas, although he did not try the case, added that the vessel was to blame "in that she was proceeding at an immoderate rate of speed in a fog, contrary to law." Of that fact the learned Judge had no judicial knowledge.

The learned Judge (Townsend) who tried the case decreed affirmatively and conclusively that the interest of the petitioner in *La Bourgogne* and her pending freight was limited to the value of one lifeboat and one liferaft.

Judge Thomas by his decree determines, negatively, that the petitioner's liability does not include freight or passage money received by the petitioner for the voyage, nor the subvention paid to the petitioner by the French Government.

But Judge Thomas did not judicially know that these questions were in the case. He had no jurisdiction or authority to vary Judge Townsend's decree, which *fixed the limit* of the petitioner's liability, by substituting a statement that the petitioner was *not* liable for certain sums of money, thus leaving the *limit of liability* undetermined.

An essential part of Judge Townsend's decree is the finding that the petitioner has transferred and surrendered its interest in the vessel and her pending freight to the trustee appointed in the cause.

This essential finding is left out of Judge Thomas' decree, so that it is vulnerable not only to the objection that it contains only *repetitions*, but also to the objection that it does *not* repeat or embrace an essential part of the earlier decree.

In fact, unwarrantable liberties have been taken with Judge Townsend's decree whoever prepared the later decree for Judge Thomas' signature.

It was unnecessary to repeat the earlier decree in the later one; but if that course was adopted the earlier decree should have been recited *in ipsissimis verbis*.

SIXTH POINT.

Nothing was before the Circuit Court of Appeals except the report of the Commissioner.

If, therefore, we exclude from the decree of July 11, 1904, those portions which are mere repetitions of the provisions of the decree of March 22d, 1902, nothing is left of the latter decree except the disallowance of the claim of the S. S. White Dental Company, the allowance of the other claims, and the adjustment of costs.

There were fifteen assignments of error and all of them, except the fifteenth, relate to matters embraced in the decree of March 22d, 1902.

The fifteenth assignment related to the disallowance by the Commissioner, and by the Court, of the claim of the S. S. White Dental Company.

No error was assigned to those portions of the decree of July 11, 1904, which dispose of the costs, and restrain the prosecution of other proceedings (Record, pp. 1334-7).

SEVENTH POINT.

The repetitions by Judge Thomas of the matters finally decided in the first instance by Judge Townsend were obviously improper and were merely an attempt to revive a decree from which no appeal had been seasonably taken.

These repetitions were unnecessary and improper and in one instance the repetition has resulted in a palpable absurdity.

The decree of March 22, 1902, disallows claims for loss of life and withdraws them from the consideration of the Commissioner.

The Commissioner took the proofs of the claimants, excluding such claims; reported to the Court; and the Court confirmed his report.

Yet, the decree of July 11, 1904, *after the event,* contains an adjudication that claims for loss of life "are *hereby* disallowed and excluded from the consideration of the commissioner in this proceeding" (Record, fol. 3971).

Surely as to this matter the decree of March 22, 1902, was *final.*

It was equally so as to every matter embraced in the pleadings, as a comparison of the petition with the answers, and with the statements of claims, will demonstrate.

The correctness of our view of the nature of Judge Townsend's decree is confirmed by other matters appearing in the case.

Mr. A. Gordon Murray, proctor for the claimants, Henny, *et al.*, served notices of appeal from Judge Townsend's decree, which confirms our contention that in *his* opinion Judge Townsend's decree was *final.*

These notices of appeal were not printed in the record, but have since been added thereto, on the petitioner's motion, and in them Judge Townsend's decree is called a "final decree" (Record, pp. 2207-8-9).

Evidently, therefore, the learned counsel, at that time, considered that Judge Townsend's decree was a final decree within the meaning of the Statute, from which an appeal would lie.

EIGHTH POINT.

The notice of appeal of the claimants in the cause was not sufficient.

The appellants did not file a general notice of appeal as described by Admiralty Rule 1, of the Circuit Court of Appeals, so as to entitle them to raise any and all questions involved in the case.

They apparently attempted to bring the appeal under the Admiralty Rule 3, of the Circuit Court of Appeals, which provides:

> "The appellant may also at his option, state in his notice of appeal that he desires only to review one or more questions involved in the cause, which questions must be clearly and succinctly stated; and he shall be concluded in this behalf by such notice, and the review upon such appeal shall be limited to such questions."

The notice of appeal in the present case merely

specifies certain portions of the decree of July 11, 1904, as those from which an appeal is taken (Record, pp. 1331-2).

The 5th, 6th and 7th specifications, go to those portions of the latter decree which dispose of the costs and restrain the prosecution of other proceedings.

As no errors are assigned relating to these matters, the right to appeal must be deemed to be waived as to them.

For the purposes of the appeal we are thus left with two decrees substantially alike, with the important exception above referred to, and with the exception that the latter one contains a provision disallowing the claim of one claimant; and every alleged error, except the last, relates to matters decided by the earlier decree.

Putting it another way; everything in the decree of July 11, 1904, which makes it apparently a *final decree* consists of substantial *repetition* of the decree of March 22, 1904.

NINTH POINT.

The Supreme Court will not review a question of FACT decided concurrently by the District Court and by the Circuit Court of Appeals in the same way.

Both the District Court and the Circuit Court of Appeals decided *as a question of fact* that the loss of the Bourgogne was *without the knowledge or privity of the petitioner*, and therefore the petitioner was entitled to a limitation of liability as provided by the statute.

This was not only the decision of Judge Townsend in his original decree and also of the Circuit Court of Appeals, but was repeated in the supererogatory opinion of Judge Thomas, to which reference has been made.

All these learned judges UNANIMOUSLY decided that the disaster in question was *without the privity or knowledge of the petitioner*, and therefore that the petitioner was entitled to a limitation of liability under the statute and as prayed in the original petition in the District Court.

It is not necessary to go into an extensive examination of this very plain rule so often laid down by this Court.

See

18 St., at Large, Chap. 77, p. 315.
Compania La Flecha vs. Braver, 168 U. S., p. 104.
Stuart vs. Hayden, 169 U. S., p. 1.
Baker vs. Cummings, 169 U. S., p. 189.
Carib Prince, 170 U. S., p. 655.

Under the Act of March 3, 1875 (18 Stat. L. 315) it was provided that:

> "The review of the judgments * * * by the Supreme Court upon appeal, should be limited to a determination of the *questions of law arising upon the record.*"
>
> Act March 3, 1875, 18 Stat. L., 315.

Of course, since the Act of 1877 establishing Circuit Courts of Appeals, the Act of 1875 has been somewhat modified, but not in this respect.

In Campania La Flecha v. Braver, *supra*, it was held:

> "No ground is shown for reversing or modifying the conclusion reached by both courts below. *Their concurrent decisions upon a ques-*

tion of fact are to be followed unless clearly shown to be erroneous."

Campania La Flecha v. Braver, 168 U. S., 104, at page 123.

And to the same effect see the following cases:

Morewood v. Enequist, 23 How., 491.
The Richmond, 103 W. S., 540.
The Conqueror, 166 U. S., 110, 136.
Illinois v. Illinois Central R. R. Co., 184 U. S., 77, at p. 98.

TENTH POINT.

No right of action for loss of life is maintainable in this case.

It is well settled that cases of tort arising upon the high seas between parties of different nationalities, will, in the Admiralty Courts of the United States, be governed by the general maritime law, as understood and administered in those courts.

The Scotland, 105 U. S., 24.
The Belgenland, 114 U. S., 355.
The Brantford City, 29 Fed., 373, 383.

It is also well settled that the general maritime law, like the common law, gives no right of action for death by wrongful act. No such action will lie in the courts of the United States, under that law.

The Harrisburg, 119 U. S., 199.
The Alaska, 130 U. S., 201.
Butler v. Boston Steamship Co., 130 U. S., 527.

As the high seas was the scene of the negligence, collision and death here complained of, and as the

tort (likewise the suit) is one between persons of different nationality, it is submitted that these authorities are conclusive.

As between parties of different nationalities, the general maritime law, as the law of the forum, will be applied to all cases of negligence arising upon the high seas, no exception having been made in the decisions by which the present case can be excluded from that general rule.

Though the tort may have occurred upon the vessel the *locus in quo* was nevertheless the *high seas.*

In *The Scotland* which was a case of collision upon the high seas between a British and an American vessel; Held:

> "In administering justice between parties it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or state, they are generally to be determined by the laws of that state. Those laws pervade, all transactions which take place where they prevail, and give them their color and legal effect. Hence, if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. If not shown, we would apply our own law to the case. In the French or Dutch tribunals they would do the same. But, if a collision occurs on the high seas, where the law of no particular state has exclusive force, but all are equal, any forum called upon to settle the rights of the parties would *prima facie* determine them by its own law as presumptively expressing the rules of justice; but if the contesting vessels belonged to the same foreign nation, the court would assume that they were

subject to the law of their nation carried under their common flag, and would determine the controversy accordingly. If they belonged to different nations, having different laws, since it would be unjust to apply the laws of either to the exclusion of the other, the law of the forum, that is the maritime law as received and practiced therein, would properly furnish the rule of decision. In all other cases each nation will also administer justice according to its own laws. And it will do this without respect of persons, to the stranger as well as to the citizen."

The Scotland, 105 U. S., 24.

And in *The Belgenland* the court on page 369 said:

"As to the law which should be applied in cases between parties or ships of different nationalities arising on the high seas not within the jurisdiction of any nation, there can be no doubt that it must be the general maritime law as understood and administered in the courts of the country in which the litigation is prosecuted."

The Belgenland, 114 U. S., 355.

In *The Brantford City*, where the subject was thoroughly treated by District Judge Brown of the Southern District of New York, in an opinion which was afterwards referred to with approval by this court in *Liverpool Steam Co. v. Phoenix Ins Co.*, 129 U. S., 397 461, the court on page 383 thus stated the rule:

"But inasmuch as the high seas are the common ground of all nations, and not governed by merely the municipal laws of either, the quality of acts committed on the high seas as between persons or ships belonging to different nations whose laws are different is determined by the maritime law as accepted and adminis-

tered in the forum where the suit is prosecuted."

Liverpool Steam Co. v. Phœnix Ins. Co., 129 U. S., 397, 461.

Though these were collision cases the rule as stated, extends as well to all other cases of tortious negligence. This was declared by the court in *The Brantford City*, at page 383:

"The fact that in most of the cases cited the injury arose from collision is immaterial. The *gravamen* of the action is negligence. On that alone the action depends. It is negligence only that constitutes the tort. It is so in this case in its aspect as a tort; and as this negligence resulting in damage to libellants occurred partly within our jurisdiction and partly upon the high seas the law applicable to the case, as one of tortious negligence, would seem upon the above authorities to be our own law as the law of the forum."

The Brantford City, 29 Fed. R., 373, 383.

ELEVENTH POINT.

There is no question of comity or reciprocity in the application of the law of New York to this case, and the Circuit Court of Appeals erred in this particular.

The French law to the present case is absolutely irreconciliable with the decisions above quoted. As will be seen hereafter, it involves a misapplication to a case of pure *tort* of a rule which is limited to cases founded upon certain maritime *contracts*, whereby the parties will, in the absence of express

agreement to the contrary, be presumed to have intended to contract with reference to the law of the country to which the ship belongs—the "law of the flag."

But let us examine the position in its various aspects.

In the first place it may be observed that it is not entirely clear that an action for death is maintainable in admiralty under a foreign statute, even where the injury occurred within the exclusive waters of the foreign country. In *The Alaska*, 130 U. S., the court (p. 209) construed the *Harrisburg* case as holding that, "In the absence of an *Act of "Congress* or of *a statute of a State* giving a right "of action therefor, a suit in admiralty could not "be maintained in the courts of the United States "to recover damages for the death of a human being "on the high seas, or on waters navigable from the "sea, which was caused by negligence," If the phrase "statute of a State," used by the court, referred exclusviely to a statute of one of our domestic States, that language is decisive of the present case, for here there is no Act of Congress nor State statute upon which the action can be based. But even if our courts of admiralty will, *as between citizens of the same foreign country*, enforce an action for death arising under the statute of that country and within its exclusive waters yet it would seem that this will not be done under other condition of citizenship. In courts of admiralty the municipal law of a particular country is allowed to affect its own people in their relations to each other, but where the rights of a foreigner are involved "the commonly received law of the whole commercial world" will be observed. The *Lottawanna*, 21 Wall., 558, 572.

Since *The Alaska* was decided the Circuit Court of Appeals for the Sixth Circuit, in *Robinson* v.

Detroit & C. Steam Nav. Co., 73 Fed., 883, an admiralty case, sustained an action for death arising in Canadian waters, under a Canadian statute, but no point of distinction between a foreign statute and a State statute, and no question of citizenship as affecting the application of the foreign statute, was raised or decided.

It is also to be observed that there is nothing in the language of the French statute indicating that the French legislature intended it to have operation beyond the territorial limits of the French nation.

The question as to the extra-territorial force of a statute is one of *general* and *international* law, upon which this court will exercise its own independent judgment.

Greaves v. *Neal*, 57 Fed., 816, 817.
Evey v. *Mexican Cent. Ry. Co.*, 81 Fed., 294, 309.
Huntington v. *Attrill*, 146 U. S., 657, 680, *et seq.*
B. & O. R. R. Co. v. *Baugh*, 149 U. S., 368.

And in this country statutes, silent as to their territorial operation, are construed to be limited in their effect to the territory over which the legislature had jurisdiction.

The Appallon, 9 *Wheat.*, 362, 390.
The E. B. Ward, 16 Fed., 255.
Armstrong v. *Beadle*, 5 Sawyer, 484; 1 Fed. Cas., 1138.
Bigelow v. *Nickerson*, 70 Fed., 113, 116.
Whitford v. *Panama R. R. Co.*, 23 N. Y., 465, 470-471.
Lehman v. *McBride*, 15 Ohio St., 573, 642.

But let it be assumed for argument that the Federal courts of Admiralty will, on the principle of comity, enforce a right of action under the statute of a foreign country for death of a stranger occurring *within the exclusive waters of that country;* that the French statute in question here was designed to operate extra-territorially, as averred; and that under the circumstances of the death appellant has, under that statute, an action *enforceable in the courts of France.* The question then remains, is this right of action (or what would be recognized in the French courts as a right of action) which arose upon the French statute, operating extra-territorially not by act or agreement of parties, *but of its own inherent force*, such a right as will be enforced here? Clearly the answer must be in the negative. While it is true that on the ground of natural allegiance every nation has a right, by its own laws, to bind *its own subjects* while abroad, this right is not one that will be respected except in its own courts, for it rests for its force only upon the personal relation between sovereign and citizen, and not upon the nation's territorial sovereignty. The laws of one nation, so far as they operate beyond the reach of its territorial sovereignty, are not sovereign laws at all, and consequently are not by any rule of international comity entitled to recognition or force in the courts of another.

Story on Conflict of Laws, Secs. 21, 22.
The Appollon, 9 Wheaton, 362, 370, 371.
The Scotland, 105 U. S., 24.
The E. B. Ward, 16 Fed., 255.
Carlson v. *United, etc., Pilots' Ass'n.*, 93 Fed., 468, 471.
Armstrong v. *Beadle*, 5 Sawyer, 484; 1 Fed. Cases, 1138.
Roth v. *Roth*, 104 Ill., 35, 44.

Whitford v. *Panama Railroad Company*,
23 N. Y., 465, 470, 471.

In Story on Conflict of Laws the author says, Sec. 21:

> "Upon this rule (of territorial limits of sovereignty) there is often ingrafted an exception of some importance to be rightfully understood. It is that although the laws of a nation have no direct binding force or effect upon persons within its own territories, yet that every nation has the right to bind its own subjects by its own laws in every other place."
>
> Story on Conflict of Laws, Sec. 21.

And again in Sec. 22:

> "Without entering upon this subject (which properly belongs to a general treatise upon public law) it may be truly said that no nation is bound to respect the laws of another nation made in regard to the subjects of the latter who are non-residents. The obligatory force of such laws of any nation cannot extend beyond its own territories. * * * Whatever may be the intrinsic or obligatory force of such laws upon such persons, if they should return to their native country, they can have none in other nations wherein they reside. Such laws may give rise to personal relations between the sovereign and subjects, to be enforced in his own domains; but they do not rightfully extend to other nations. * * * A State has just as much intrinsic right, and no more, to give to its own laws an extra-territorial force as to the property of its subjects situated abroad, as it has in relation to the persons of its subjects domiciled abroad. That is, as the sovereign laws, they have no obligation on either the person or the property. When, therefore, we speak of the right of a State to bind its own native subjects everywhere, we speak only of its own claim and exercise of sovereignty over them when they return within its own territorial jurisdiction,

and not of its right to compel or require obedience to such laws on the part of other nations within their own territorial sovereignty."

Story on Conflict of Laws, Sec. 22.

In *The Appollon, supra*, the Court, on page 370, said:

"The laws of no nation can justly extend beyond its own territory, *except so far as regards its own citizens.* They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in their municipal laws may be, they must always be restricted in construction to places and persons upon whom the legislature have authority and jurisdiction."

The Appollon, 9 Wheaton, 362, 370, 371.

In *The Scotland, supra*, the Court said, on pages 31 and 32, on this point:

"So far as they stand on general grounds of argument (certain English cases), the most important consideration seems to be this: That the British legislature cannot be supposed to have intended to prescribe the regulations to bind the subjects of foreign states, or to make for them a law of the high sea; *and that if it had so intended, it could not have done it.* This is very true. No nation has any such right. Each nation, however, may declare what it will accept, and by its courts enforce as the law of the sea when parties choose to resort to its forum for redress. And no persons subject to its jurisdiction or seeking justice in its courts, can complain of the determination of their rights by that law unless they can propound some other law by which they ought to be judged; and this they cannot do except where both parties belong to the same foreign nation, in which case it is true they may well claim to have their controversy settled by their own law. * * * But where

> they belong to the country in whose forum the litigation is instituted, or to different countries having different systems of law, the court will administer the maritime law as accepted and used by its own sovereignty."
>
> The Scotland, 105 U. S., 24.

The E. B. Ward, supra, was an action in admiralty for death of persons on board of a Swedish vessel occurring on the high seas through the negligence of a Louisiana vessel, and it was sought to recover under the Louisiana statute. District Judge Billings, on page 257, said:

> "This question would be precisely the same and must have the same answer in the courts of common law and the courts of admiralty. The operation of the statute was intended to be confined to establishing a rule of survivorship for the government of the community who constitute the State of Louisiana and could not include a cause which did not concern its inhabitnats and did not originate within its territory; and, least of all, could it give a lien upon or authorize an action against a vessel."
>
> The E. B. Ward, 16 Fed Rep., 255.

(The above case was reversed by the Circuit Judge in 17 Fed., 456, but upon another point, as will be seen from the final decree in the same case, 23 Fed., 900).

Armstrong v. Beadle, supra, was an action at law under the California statute to recover for death upon the high seas of a passenger on board an Oregon vessel. In deciding upon demurrer to an asswer that the action could not be maintained, Circuit Court Judge SAWYER on page 1138 said:

> "The first point presented is that the statute has no extra-territorial operation, and is limited to accidents occurring within the territorial jurisdiction of the state; and death occurred upon the high seas, beyond the legisla-

tive jurisdiction of the state, the statute is inapplicable. There was no liability at common law for the death of a party resulting under circumstances like those set out in the complaint; and unless the statute in question gives the right of action, the plaintiff cannot recover. The statute, undoubtedly, creates a new right of action and does not merely give a remedy for a right already existing. If it operates beyond the territorial jurisdiction of the state, then it becomes a universal law, applicable to all countries, and the legislature of California would be adopting a code of laws affecting the rights of parties arising out of acts done wholly in foreign countries as well as upon the high seas. If California can pass laws of that kind, operating extra-territorially then other states and countries can pass laws upon the same subject operating upon the high seas, and these laws may be in conflict; but there is nothing in the statute to indicate that it was intended to operate beyond the limits of the state."

Armstrong vs. Beadle, 5 Sawyer, 484, and Fed. Cases, 1138.

In *Roth v. Roth, supra*, a case involving the effect abroad of rights under the Illinois marriage laws, the court on page 44 said:

"It is clearly settled by the decided weight of private international law, so called, that every state has the power to enact laws which will personally bind its citizens or subjects when sojourning in a foreign jurisdiction, provided such laws in terms profess to so bind them when thus circumstanced. It is true such laws have no extra-territorial effect so as to authorize their enforcement in a foreign country, and may therefore, so far as their execution is concerned be said to remain dormant until the return of those violating them, when they will be enforced in the same manner

and to the same extent as if their infraction had occurred within the state enacting them."
Roth vs. Roth, 104 Ill., 35, 44.

TWELFTH POINT.

A foreign statute has no application, ex proprio vigore, to suits brought in this country.

The foregoing authorities are quoted from thus freely in order to emphasize this fact, that in our courts the "law of the flag," when it is the law of a foreign nation, cannot be applied to a case of *tort independent of contract*, at least as between parties of different nationality, because this would be giving to a foreign law, *ex proprio vigore*, extra-territorial effect upon an alien,—a proposition emphatically denied by those authorities

That the present case is one of tort independent of contract cannot be doubted.

Atlantic & Pac. R. R. Co. v. Laird, 164 U. S., 393.

The John G. Stevens, 170 U. S., 113, 125.

It is evident, therefore, that the doctrine respecting the "law of the flag" is one of limited application, and that this case is outside of the limits. Wherever it has been applied so as to involve extra-territorial effect, it was in cases founded *in contract* wherein such effect was given by virtue of the *express or implied agreement of the parties*. Indeed, as was said by Mr. Justice BRADLEY (with whom Mr. Justice FIELD concurred) in his dissenting opinion in *Crapo v. Kelly*, 16 Wall., 610, 644:

"When it does apply it applies wherever the ship may be, whether on the high seas or within the limits of a foreign country. It would apply to a ship in New York harbor as well as to a ship on the high seas."

The "law of the flag," which is a mere expression to denote the law of the country to which the ship belongs, is based upon a fiction that the vessel of a nation in whatever navigable waters she may be, is a part of the nation's territory, but this fiction is maintained *for certain purposes only.* A vessel is deemed a part of her country's territory in a sense that she possesses national character in her relations with foreign vessels and peoples; she is deemed a part of her country's territory in the sense that offenses committed on board against her country's criminal laws are considered as having been committed upon her country's soil and are punishable in her country's courts when jurisdiction of the person of the offender is obtained; and she is deemed a part of that territory in the sense that the laws of her country will, in the absence of contrary agreement, supply to certain contracts *which concern the internal economy of the vessel* (such as those between master and seaman and those by which the master binds the vessel), the rule of decision by which the rights of the parties to those contracts shall be governed. But further than this the fiction does not extend; for as we understand *Crapo v. Kelly*, hereinafter referred to, the rule that a transfer of ownership in the vessel is governed by the law of her home, proceeds upon special ground independent of that fiction. In *The Branford City*, District Judge Brown said that the "law of the flag" had no application to torts committed on the high seas as between persons or ships of different countries having different laws;

and we are aware of but one case of that kind where it was applied, and there it was upon the express ground that the tort in question consisted of a breach of duty arising from a contract of a seaman for personal service upon the ship, and that by their contract the parties impliedly stipulated that their rights should be determined by the law of the country to which the ship belonged. (*The Lamington*, 87 Fed., 752).

These views as to the limitation of the doctrine of the "law of the flag" are derived from the following authorities:

The Scotland, 105 U. S., 24.

Johnson v. Twenty-one Bales, 2 Paine, 601, and 13 Fed. Cas., 855.

Thomassen v. Whitwell, 9 Ben., 403 and 23 Fed. Cas., 1006.

The Brantford City, 29 Fed., 373.

The Johann Friedrich, 1 W. Rob., 35.

The Leon, Law Rep., 6 Prob. Div., 148.

Chartered Mercantile Bank of India v. Netherlands India Steam Nav. Co., Law Rep., 10 Q. B. Div., 521.

Foote's Private International Jurisprudence, 486, 495.

Woolsey's International Law, Sec. 44, p. 80-81.

In *The Scotland* the court on page 30 said:

"Some laws, it is true, are necessarily special in their application to domestic ships, such as *those relating to the forms of ownership, charter party and nationality*: others follow the vessel wherever she goes, as the law of the flag, *such as those which regulate the mutual relations of master and crew and the power of the master to bind the ship or her owners.*"

The Scotland, 105 U. S., 24.

THIRTEENTH POINT.

No ground of action can be based in this case on the French Law.

But even assuming that the French law allowing a recovery of damages for loss of life by negligence has any extra territorial force and operates on a French ship on the high seas and that the benefit of such law could be invoked by any other than a French citizen, all of which propositions are denied, it is entirely certain from what appears in this record that if any of these claimants for loss by death had sued in France they could not have recovered. On the facts of the collision taken to be proved by the Circuit Court of Appeals in this case on the ground of negligfence based upon a speed of about ten knots an hour the French Court would have held the Bourgogne *was not at fault.*

In the only case brought in France, so far as appears, that of the widow Resal who is also one of the claimants, here, while she recovered a judgment in the court of first instance the judgment was *reversed and the case dismissed* on this very ground by the Court of Appeals of Paris, and its judgment was affirmed by the Court of Cassation (fols. 3650-3717).

It is inconceivable that a claimant can, as against the ship or its owner in an American court, recover on the ground that the ship at sea was a part of the territory of France, and that the claimant has the benefit of the French law, if he could not have recovered on the facts if the suit had been brought in France in a French Court.

It was error, therefore, in any view, for the Circuit Court of Appeals to hold that, by reason the French law extending over the vessel at sea, these claims should have been included among the losses to be presented to the Commissioner.

FOURTEENTH POINT.

The law of the flag is an exploded doctrine and is not a part of our modern law.

In *Johnson v. Twenty-one Bales*, 2 Paine, 601, and 13 Fed. Cas., 855, a prize case, the Court said, on page 862:

> "The notion that vessels must be considered part of the territory of a nation *is antiquated and exploded.* The most strenuous advocates for the freedom of goods in free ships no longer place the controversy on that ground. * * *
>
> Amidst the uproar of the world the flag, too, has dwindled into a vain emblem of sovereignty, protecting nothing; nothing, certainly, but the vessel and designating only to what portion of the globe she belongs. These are the principles of England.
>
> They were recognized by our Government in its correspondence with the French Minister in the year 1793, and I am not prepared to deny that they are founded in reason."
>
> *Johnson vs. Twenty-one Bales,*
> 2 Paine, 601, and 13 Fed. Cas., 855.

In *Thomassen* v. *Whitwell*, 9 Ben., 403, and 23 Fed. Cas., 1006, a case of collision on the high seas between a Norwegian and a British vessel, in which it was held that neither the law of Norway nor the

law of Great Britain, but the *general maritime law* as the law of the seas, must determine the liability, Judge Benedict, on page 1007, said:

> "I am aware that it has been sometimes attempted, in determining questions of this character, to call in the aid of that fiction of law by which a ship, wherever she may be, is for certain purposes deemed to be a part of the land from which she hails. In this view it could be here contended on the one hand that the obligation of the defendant should be deemed to have been incurred in England, because the acts of negligence which rendered him liable were acts done in the navigation of a British ship; while, on the other hand, it could be urged that the blow which did the injury was delivered on a Norwegian vessel, and the obligations resulting from the blow must therefore be deemed to have been incurred in the kingdom of Norway and Sweden. Neither of these positions has been assumed by the advocates in this case; and it doubtless appeared to them, as it does to me, that it would be carrying fiction too far to decide that the collision in question occurred in either of the countries mentioned. * * * The nature and extent of the defendant's obligation must indeed be determined according to the law of the place where he incurred the obligation, and that place was not in England nor in Norway, but on the high seas. The law of the seas, the law maritime according to the law of nations, is therefore the law to be here administered."
>
> *Thomassen vs. Whitwell*, 9 Ben, 403, and 23 Fed. Cas., 1006.

In *The Brantford City*, 29 Fed. R., 373, the court had occasion to discuss both the law to be applied to torts occurring upon the high seas as well as that applicable to contracts to be performed there. With reference to torts the learned judge, on page 383, said:

"Hence acts tortious by the law of England, if committed on the high seas, are actionable in England, though not tortious by the municipal law of the defendant's domicile or of the ship's flag; *and in general the law of the flag has no application to torts committed on the high seas as between persons or ships of different countries, having different laws.* The point was distinctly presented and so adjudged in the case of *The Leon*, 6 Prob. Div., 148. The same rule in this country has been repeatedly affirmed by the Supreme Court. *The Scotland*, 105 U. S., 24, 29; *The Belgenland*, 114 U. S., 355."

And in defining the limited class of cases to which the law of the flag may be properly applied the Court further said:

"The 'law of the flag,' so-called, which, it is urged, should govern the case, does not embody any rule of legal construction. Literally it is but a concise phrase to express a simple fact, namely, the law of the country to which the ship belongs and whose flag she bears, whether it accords with the general maritime law or not. In so far, however, as the law of the flag does not represent the general maritime law, it is but the municipal law of the ship's home. It has therefore, no force abroad except by comity. But foreign law is not adopted by comity unless some good reason appear in the particular case why it should be preferred to the law of the forum. The most frequent and controlling reasons are the actual or presumed intent of the parties, or the evident justice of the case arising from its special circumstances. *On this ground the law of the ship's home is applied by comity to regulate the mutual relations of the ship, her owner, master and crew, as among themselves; their liens for wages and modes of discipline.*"

The Brantford City, 29 Fed. R., 373-383.

In *The Johann Freiderich*, 1 W. Rob., 35 (quoted in *The Belgenland*, 114 U. S., 367), Doctor Lushington said:

> "All questions of collision are questions *communis juris;* but in case of mariner's wages, whoever engages voluntarily to serve on board a foreign ship necessarily undertakes to be bound by the law of the country to which such ship belongs, and the legality of his claim must be tried by such law."
>
> The Johann Friederick, 110 Rob., 35.

The Leon, Law Rep., Prob. Div., Vol. 6., p. 148, was an action *in personam* by the owners of a British vessel to recover damages against the owners of a Spanish vessel for collision upon the high seas, alleged to have been caused by the negligent navigation of the Spanish vessel; and it was set up in defense that, by the Spanish law, that the owners were not liable for such negligence, the liability being upon the master and mariners only.

Sir Robert Phillimore held that the law governing the liability of the defendants was not the Spanish law, but the general maritime law as administered in England.

The Leon, 6 Law R., Probate Div., 148.

In *Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co.*, Law Rep., Q. B. Div., vol. 10, the question as to the applicability of the law of the flag received thorough discussion.

This was an action on the case by a person who shipped goods on board the defendants' vessel, *Crown Prince*, to recover for loss of the goods by a collision between that vessel and the *Atjeh* (also belonging to the defendants), caused by the negligent navigation of both vessels.

A question was made as to the nationality of the

vessels, both of which carried the Dutch flag, but the court assumed them to be Dutch ships for the purpose of passing upon the defendants' contention that the Dutch law, the law of the flag, governed the case.

In deciding against this contention, BRETT, L. J., on page 536, said:

> "But I will assume that both ships were Dutch ships; nevertheless, what ever might have been the Dutch law, if this case had been tried in Holland, it seems to me the defendants are still liable. The negligence on the part of the servants of the defendants did not take place in Holland; it did not take place within the sole territorial jurisdiction of a foreign country. This case is not like the *M. Moxham*, where the ship in Spain ran against a pier or quay in Spain. In that case, whatever the cause of action was, it arose entirely in Spain, and the action was an action in tort, and the well-known rule applies that for any tort committed in a foreign country, within its own exclusive jurisdiction, an action of tort cannot be maintained in this country unless the cause of action would be a cause of action in that country, and also would be a cause of action in this country. Both must combine if the tort alleged was committed within the exclusive jurisdiction of a foreign country. But the negligence complained of in this action took place upon the high seas, which is the common ground of all countries. Therefore that rule with regard to the exclusive jurisdiction of a foreign country does not apply. The case comes to this, whether an action for a tort committed on high seas between two foreign ships (for I assume for this purpose that both ships are foreign ships) an action can be maintained in this country, although it is not a tort according to the laws of the courts in that foreign country. From time immemorial, as far as I know, such actions have been maintained in the Court of Admir-

alty, and the rule of the liability of the ship owner for the acts of his servants has been invariably employed, and inasmuch as the rule of exclusive jurisdiction cannot apply, it seems to me that if a foreigner in this country can be served with a writ for an act of his servants done on the high seas, which are as much within the jurisdiction of England as they are within the jurisdiction of any other country, an action can be maintained in a court of common law.

Therefore, even if I assume these to have been Dutch ships, it seems to me that inasmuch as the injury to the plaintiffs was committed by the servants of the defendants, not in any foreign country, but on the high seas, which are subject to the jurisdiction of all countries, the question of negligence in a collision raised in a suit in this country is to be tried, not indeed by the common law of England but by the maritime law, which is part of the common law of England as administered in this country; and by the maritime law of England as administered in this country a ship owner is liable for the negligence of the master and crew of his ship. That seems to me to have been distinctly stated in the cases of *The Milan* and *The Leon*, and as far as I know it has been the invariable practice of the Court of Admiralty."

Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Co., Law. Rep., Q. B. Div., Vol. 10, p. 544.

LINDLEY, L. J., said:

"What then is the law applicable as between the plaintiffs and the defendants to a loss of the plaintiff's goods occasioned by a collision between these two ships? What reason is there for saying that Dutch law as distinguished from English law or the general maritime law is to govern such a case? The reason alleged

is that each ship being Dutch, the law of the flag, *i. e.*, the Dutch law, regulates the persons on board each ship, and determines the rights and liabilities of her owners both towards the captains and crews, and towards the owners of the cargoes on board. This reason is based on a very common and fruitful source of error, viz., the error of identifying ships with portions of the territory of the states to which they belong. The analogy is imperfect and is more often misleading than the reverse, as I have endeavored to point out before. *Reg v. Keyn.* In this particular case the analogy appears to me more misleading than usual. I am not aware of any decision in this country to the effect that where two ships come into collision on the high seas the rights and liabilities of their respective owners have been held to depend on the laws of the respective flags of the ships. The law applicable in this country to cases of collision on the high seas is the maritime law as administered in England and not the laws of the flags. See *The Johann Frederich, The Leon* and Foote on Priv. International law, pp. 398 and 403. According to the maritime law, the defendants as principals of the captain of the *Atieh*, are clearly liable for the consequences of his negligence."

Chartered Mercantile Bank of India vs. Netherlands India Steam Navigation Co., Law. Rep., Q. B. Div., Vol. 10, p. 544.

FIFTEENTH POINT.

The authoritative writers are in agreement with the decisions of the Courts on the point just above made.

Foote, in his Private International Jurisprudence, says on page 486:

> "In pronouncing upon the torts committed upon the high seas the Court of Admiralty must of course be guided by maritime law without reference to the municipal law of either of the litigant parties, except where English statutes have laid down different principles for its guidance. The maritime law as administered in English courts is, in fact, according to the latest expression of judicial opinion, English law; and in applying it to actions founded upon torts committed upon the high seas, the law of the forum is, in a sense, adopted in the place of any with a better claim to be regarded as the *lex loci.*"
>
> Foote, Private International Jurisprudence, 486.

And, again, on page 495:

> "If the place where the act complained of was committed is not under the domain of any special municipal law, the *lex fori* will be applied to test the tortious nature of the act.
>
> The *lex fori* in English courts, with respect to wrongful collision on the high seas, is the general law maritime as administered in England."
>
> Foote, Private International Jurisprudence, p. 495.

It is true that in a number of adjudged cases the courts have used expressions which, standing alone,

would seem to sustain the contention that the "law of the flag" will be applied indiscriminately to all cases, both of contract and tort, arising upon navigable waters anywhere; and this has produced some apparent conflict of authority. But when confined in its application to the facts of the particular case, these views do *not* sustain the contention, and when not so confined are *obiter dicta*, upon which no argument can justly rest.

In *Crapo* v. *Kelly*, 16 Wall., 610, the question was whether a judicial assignment in an insolvency proceeding in Massachusetts passed title to the insolvent's vessel, registered in Massachusetts but then upon the Pacific Ocean, as against a subsequent attachment in the State of New York, made by a New York creditor of the insolvent when the vessel came into the port of New York on its homeward voyage. The court held that it did; that the Massachusetts assignment must be given the same effect it would receive in the courts of that State, and that in cases of transfers on land of ships at sea, where contemporaneous delivery of actual possession is impossible, it is sufficient if the vendee takes possession within a reasonable time after the vessel returns to her hom port—which she had not done when the attachment in question was levied. The decision rested nothing on the fiction that the vessel was Massachusetts territory.

Wilson v. *McNamee*, 102 U. S., 572, was an action *at law* by a licensed pilot of the State of New York to recover pilotage from the consignee of a schooner which had come into the port of New York from a foreign port. The claim was based upon a New York statute which provided that masters or consignees of vessels from a foreign port bound to the port of New York, in case of the master's refusal to take the first licensed pilot offering his services, should pay the pilotage as if the services had been

accepted. The facts were that the plaintiff spoke the incoming vessel fifty miles out at sea, and his services were refused, and the vessel came into port without a pilot. The point was raised that as the tender and refusal took place outside of the jurisdiction of the State of New York, the action could not be sustained. The Court held that as this point was not raised in the Circuit Court it could not be considered; but, nevertheless, it went on to consider it, and on page 574 said:

> "A vessel at sea is considered as a part of the territory to which it belongs when at home. It carries with it the local legal rights and legal jurisdiction of such locality. All on board are endowed and subject accordingly. The pilot upon his boat had the same authority from the laws of New York to tender and demand employment and the same legal consequences under the circumstances followed the refusal of the master, as if both vessels had then been *infra fauces terroe* where the municipal jurisdiction of the State was complete and exclusive. The jurisdiction of the local sovereign over a vessel and over those belonging to her in the home port and abroad on the sea is, according to thee law of nations, the same. Dana's Wheaton, p. 169, Sec. 106; I Kent Com., 27; Vattel, Bk. 1, c. 19, Sec. 216; 2 Rutherford Inst., Bk. 2, c. 9, Sec. 8, 19."
>
> Wilson v. McNamee, 102 U. S., 572.

SIXTEENTH POINT.

The particular regulations or laws of one State cannot operate so as to decide an international question, especially when there is a conflict.

It will be observed that the text writers cited by the court in the case of Wilson vs. McSamee (*supra*) had reference to the status of vessels of different nationality in respect of their relations with one another on the high seas—their international relations. But the opinion of the court cannot go beyond the particular facts of the case. The suit was brought in the courts of New York, and the decision was that the statute in question was binding upon those courts as a harbor regulation; but it does not follow that if the suit had been brought in admiralty the action would have been sustained.

In the *Steamboat New York* v. *Rea*, 18 Howard, 223, the court, on pages 226-8, said with reference to a New York statute regulating the lighting of vessels:

> "This is a rule of navigation prescribed by the laws of New York and is doubtless binding upon her own courts, but cannot regulate the decisions of the Federal courts administering the general admiralty law. They can be governed only by the principles peculiar only to that system as generally recognized in maritime countries, modified by acts of Congress, independently of local legislation."
>
> Steamboat New York v. Rea, 18 Howard, 223.

It is also to be said of Wilson v. McNamee, that the judgment of the Court that the pilot should recover, was undoubtedly correct on the facts, because the right of action under the New York statute arose, *not from the tender and refusal upon the high seas,* but from the vessel's *coming in* to the harbor without a pilot.

When it arose the vessel and her master were *within the exclusive waters of New York* and the statute was given no extra-territorial effect.

Wilson v. McNamee, 102 U. S., 572.

U. S. v. *Rogers,* 150 U. S., 249, was a criminal prosecution for an assault occurring on board of a United States vessel while on the Detroit River, within the territorial jurisdiction of the Dominion of Canada. The Court held the statute upon which the prosecution was based extended in terms to assaults committed upon the waters of that river upon the Canadian side, and therefore that the offense was cognizable by the United States courts. In this connection the court, on page 264, said: "A vessel is deemed a part of the territory of the country to which she belongs." The decision goes merely to the proposition that the United States courts will enforce the criminal statutes of the United States upon its own citizens for offenses committed on its own vessels while in foreign waters, when those citizens are brought within the exclusive jurisdiction of those courts; and for that purpose undoubtedly "a vessel is deemed a part of the territory of the country to which she belongs." But this is so deemed only by the courts of her own country; for it is a fundamental law that penal or criminal laws will not be enforced outside the jurisdiction of their enactment.

As was said by the court in the case of *In Re Ross*, 140 U. S., 453, 464:

> "The deck of a private American vessel, it is true, is considered for many purposes constructively as territory of the United States, yet persons on board of such vessels, whether officers, sailors or passengers, cannot invoke the protection of the provisions referred to (certain provisions of U. S. laws) until brought within the actual territorial boundaries of the United States."
>
> *In re* Ross, 140 U. S., 453.

In re Ah Sing, 13 Fed., 286, and *In re Moncan*, 14 Fed., 44, are likewise applicable to the present case. In each of those cases the question was whether a Chinaman, who was a seaman on board an American vessel at the time the Chinese exclusion act was passed was to be deemed at that time a resident or non-resident of the United States, the statute not providing for the exclusion of Chinese residing here at the time the act was passed. The court held in both cases that for the purpose of residence the American vessels would be considered as United States territory, and that therefore the act did not operate to exclude the Chinaman in question.

The Lamington, 87 Fed., 752, was a libel *in rem* by a Norwegian seaman on a British vessel to recover for personal injuries resulting from the breaking of a rope, which, by the alleged negligence of the master, was in poor condition.

The court applied the British law to the question as to whether an action *in rem* would lie; but on the express ground that in his contract of service the seaman impliedly agreed to be bound by that law, and that the tort was for breach of duty arising upon the contract.

McDonald v. *Mallory*, 77 N. Y., 546, was an ac-

tion by a citizen of New York to recover for the death of a citizen of New York occurring on the high seas on board a vessel registered in New York and owned by citizens of New York.

The action was brought on the New York statute and was sustained on the ground that it operated upon all the *citizens of the State* in ships registered therein while on the high seas.

While this case is in conflict with the Federal decisions and cannot here be regarded as an authority, still, if correctly decided, it is inapplicable to the present case, because there was no diversity of citizenship between the parties upon whom the New York statute was given effect, and the relief was given *in the courts of the State which promulgated the statute.*

SEVENTEENTH POINT.

The cases decided in this country, aside from those already cited, hold that there is no right of action for negligence resulting in loss of life at sea.

In the case of the *Harrisburg*, 119 U. S., 199, it was held by this Court that in the absence of an Act of Congress, or a statute of a State, no action for damages for loss of life on the high seas may be maintained in the Courts of the United States, under the maritime law. No such action could be maintained in any case.

This reference to an Act of Congress, or of a State statute, we will hereafter show, is with respect to vessels of this country only.

We maintain, to put the point otherwise, that it

is not competent for Congress or a State to legislate concerning the liability of a *foreign vessel* on the *high seas* or in *foreign waters*.

The vessel which was the subject of the action in the case of the *Harrisburg* was an American vessel; and we might concede that in so far as American vessels are concerned it is competent for Congress to enact such legislation as is here proposed.

The Constitution of the United States provides that the judicial power shall extend, among other things, "to all cases of admiralty and maritime jurisdiction."

U. S. Constitution, Article 3, Sec. 2.

Courts of Admiralty are distinguished from the courts of law and equity, as tribunals having jurisdiction of maritime causes, contracts, torts, injuries and offenses and administering the maritime law.

1. Am. & Eng. Enc. of Law, 2d Edition, p. 645, Title, Admiralty Jurisdiction, citing Parsons on Maritime Law, 508.

The Maritime Law is defined by Bouvier's Law Dictionary as "that system of law which particularly relates to the *affairs and business of the sea;* to ships, their crews, and navigation and to the marine conveyance of persons and property."

Bouvier's Law Dictionary, Title "Maritime Law."

In the case of the *Lottawanna*, 21 Wall., 558, Mr. Justice Bradley, in delivering the opinion of the Court, said:

> "The general system of maritime law which was familiar to the lawyers and statesmen of this country *when the Constitution was adopted*, was intended and referred to when it

was declared in that instrument that the judicial power of the United States shall extend 'to all cases of admiralty and maritime jurisdiction.' Thus adopted, it became the maritime law of the United States, operating uniformly in the whole country.

"The question as to the true limits of the maritime law and admiralty jurisdiction is *exclusively a judicial question and no State law or act of Congress can make it broader or narrower than the judicial power may determine those limits to be.*"

The Lottawonna, 21 Wall., 558.

So far as an action for loss of life on the high seas is concerned, therefore, it has been judicially determined in the case of the *Harrisburg* (*supra*), that no such action will lie; and the decision of this Court in the case of the *Lottawanna*, just referred to, positively holds that such action is "exclusively a judicial question and no State law or act of Congress can make it broader or narrower than the judicial power may determine those limits to be."

Of course, it is perfectly competent for Congress to pass a law giving a right of action for loss of life occurring within its territorial jurisdiction or waters of the United States, and it is also competent for the States, as many of them have done, to enact such legislation with respect to their territorial jurisdictions.

The reason that Congress may pass an act giving a right of action for loss of life on vessels of the United States, even upon the high seas, is because vessels of a nation are considered *a part of its territory;* but no nation can exercise jurisdiction over a tort on a *foreign vessel* occurring on the high seas beyond the three mile limit; and all the State statutes giving a remedy for loss of life have been con-

strued to be limited in their effect to the territory over which the Legislature had jurisdiction.

See Queen *vs.* Keyn, Law Reports (Eng.), 2 Ex. Div., p. 63.

The E. B. Ward, 16 Fed. Rep., 255.

Armstrong vs. Beadle, 5 Sawyer, 484.

Bigelow *vs.* Nickerson, 70 Fed. Rep., 113-116.

Whitford *vs.* Panama Railroad Co., 23 N. Y., 465, 470, 471.

Lehman *vs.* McBride, 15 Ohio State, 573, 642.

In Story on the Conflict of Laws the author says, Section 21:

> "Upon this rule (of territorial limits of sovereignity) there is often ingrafted an exception of some importance to be rightfully understood. It is that although the laws of a nation have no direct binding force or effect except upon persons within its own territories, yet that every nation has the right to bind its own subjects by its own laws in every other place."
>
> Story on Conflict of Laws, Sec. 21.

In the case of *The Appollon*, 9 Wheat., 362, this Court said:

> "The laws of no nation can justly extend beyond its own territory, except so far as regards its own citizens. They can have no force to control the sovereignty or rights of any other nation within its own jurisdiction. And however general and comprehensive the phrases used in their municipal laws may be, they must always be restricted in construction to places and persons upon whom the legislature have authority and jurisdiction."
>
> The Appollon, 9 Wheat., 362.

In the case of *The Scotland*, 105 U. S., 24, this Court also said (pp. 31-32):

"So far as they stand on general grounds of argument (certain English cases), the most important consideration seems to be this: That the British Legislature cannot be supposed to have intended to prescribe regulations to bind the subjects of foreign States, or to make for them a law of the high sea; and if it had so intended it could not have done it. This is very true. No nation has any such right. Each nation, however, may declare what it will accept, and by its courts enforce as the law of the sea when parties choose to resort to its forum for redress. * And no persons subject to its jurisdiction, or seeking justice in its courts, can complain of the determination of of their rights by that law unless they can propound some other law by which they ought to be judged; and this they cannot do, except where both parties belong to the same foreign nation, in which case it is true that they may well claim to have their controversy settled by their own law. * * * But where they belong to the country in whose forum the litigation is instituted, or to different countries having different systems of law, the Court will administer the Maritime Law as accepted and used by its own sovereignty."

The Scotland, 105 U. S., 24.

The case of the *E. B. Ward*, 16 Fed. Rep., 255, *supra*, was an action in admiralty for the death of persons on board of a Swedish vessel, occurring on the high seas through the negligence of a Louisiana vessel, and it was sought to recover under the Louisiana statute. District Judge Billings on page 257, said:

"This question would be precisely the same and must have the same answer in the courts of common law and the courts of admiralty. The operation of the statute was intended to be confined to establishing a rule of survivorship for the government of the community who constitute the State of Louisiana, and could

> not include a cause which did not concern its inhabitants and did not originate within its territory; and least of all could it give a lien upon or authorize an action against a vessel."
>
> The E. B. Ward, 16 Fed. R., 255.

(The above case was reversed by the Circuit Judge in 17 Fed., 456, but upon another point as will be seen from the final decree in the same case. 23 Fed., 900).

Armstrong *v.* Deadle, *supra*, was an action at law under the California statute to recover for death upon the high seas of a passenger on board an Oregon vessel. In deciding upon demurrer to an answer that the action could not be maintained, Circuit Judge Sawyer, on page 485, said:

> "The first point presented is that the statute has no extra-territorial operation, and is limited to accidents occurring within the territorial jurisdiction of the State; and as the death occurred upon the high seas, beyond the legislative jurisdiction of the State, the statute is inapplicable. There was no liability at common law for the death of a party resulting under circumstances like those set out in the complaint; and, unless the statute in question gives the right of action, the plaintiff cannot recover. The statute undoubtedly creates a new right of action, and does not merely give a remedy for a right already existing. If it operates beyond the territorial jurisdiction of the State, then it becomes a universal law, applicable to all countries, and the Legislature of California would be adopting a code of laws affecting the rights of parties arising out of acts done wholly in foreign countries as well as upon the high seas. If California can pass laws of the kind, operating extra-territorially, then other States and countries can pass laws upon the same subject operating upon the high seas, and these laws may be in conflict; but there is nothing in the statute to indicate that

it was intended to operate beyond the limits of the State."

Armstrong v. Beadle, 5 Sawyer, 484.

In Roth *v.* Roth, 104 Ill., 35, a case involving the effect abroad of rights under the illinois marriage laws, the Court, on page 4, said:

"It is clearly settled by the decided weight of private international law, so called, that every State has the power to enact lwas which will personally bind its citizens or subjects when sojourning in a foreign jurisdiction, provided such laws in terms profess to so bind them when thus circumstanced. It is true such laws have no extra-territorial effect so as to authorize their enforcement in a foreign country, and may, therefore, so far as their execution is concerned, be said to remain dormant until the return of those violating them, when they will be enforced in the same manner and to the same extent as if their infraction had occurred within the State enacting them."

Roth [illegible]oth., 104 Ills., 35.

In the case of *The Scotland* the Court, on page 30, said:

"Some laws, it is true, are necessarily special in their application, to domestic ships, such as those relating to the forms of ownership, charter-party and nationality; others follow the vessel wherever she goes, as the law of the flag, such as those which regulate the mutual relations of master and crew and the power of the master to bind the ship or her owners."

The Scotland, 108 U. S., 30.

In the case of Wilson *v.* McNamee, 102 U. S., 572, this Court, at page 574, said:

"A vessel at sea is considered as a part of the territory to which it belongs when at home. It carries with it the local legal rights and legal jurisdiction of such locality. All on board are

endowed and subject accordingly. The pilot upon his boat had the same authority from the laws of New York to tender and demand employment, and the same legal consequences under the circumstances followed the refusal of the master, as if both vessels had then been *infra fauces terroe* where the municipal jurisdiction of the State was complete and exclusive. The jurisdiction of a local sovereign over a vessel and over those belonging to her in the home port and abroad on the sea is, according to the law of nations, the same. Dana's Wheaton, p. 169, Sec. 106; 1 Kent Com., 27; Vattel, Bk. 1, c. 19, Sec. 216; 2 Rutherford Inst., Bk. 2, c. 9, Sec. 8, 19."

Wilson vs. McNamee, 102 U. S., 572.

EIGHTEENTH POINT.

The Steamship Company was not obliged to deliver any part of the freight and passage money, either for the voyage from Havre to New York, or from New York to Havre.

As to the point made by the petitioners in behalf of Deslions, *et al.*, and Perry *et al.*, that the steamship company did not deliver to the trustee the alleged pending freight for the voyage, the following observations may be made:

The petitioner was not required to deliver to the trustee the prepaid freight and the prepaid passage money for the voyage between New York and Havre.

The statutory provisions bearing upon this point are as follows:

"Sec. 4283. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

"Sec. 4284. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and (*owner*) (owners) of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any Court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

"Sec. 4285. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this Title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight for the benefit of such claimants, to a trustee, to be appointed by any Court to competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease."

U. S. Rev. Stat., Secs. 4283, 4284, 4285.

In Admiralty Rule 54 the freight to be surren-

dered in such proceedings is referred to as "freight for the voyage."

The petition averred that the pending freight was "a total loss." Claimants contended that petitioner's interest therein amounted to about $55,000.

This $55,000, claimed as freight, includes the money collected for carriage of cargo and passengers on the trip from Havre to New York, and 1-52nd part of the compensation received from the French Government for carrying mails for a year. The claim is made that the petitioner should deliver to the trustee the sum which it received for freight and passage money on the preceding passage from Havre to New York, and on the passage on which the disaster occurred, on the ground that these passages constitute one voyage. The contract between the owners and the French Government, and the law under which it was made, are as follows:

> "The service to be performed includes a weekly line from Havre to New York, or *fifty-two voyages, going and returning.* The distance to go is 3,130 miles per *crossing,* and 6,260 miles per *voyage,* going and returning. * * * At the end of each annual period comprising the total of fifty-two *voyages* going and returning, there shall be prepared a summary of the result of each *crossing.*"

It may be true that in litigation based upon the contract of carriage the petitioner would be bound by its interpretation of the term "voyage" in the contract. Thus, in actions on insurance policies containing limitations as to voyages undertaken, the question of the intentions of master and owner as to the enterprise entered upon are material as to the voyage.

Seth Paddock vs. The Franklin Insurance Company, 11 Pick., 227, 231.

George Friend, *et als.*, vs. Gloucester Mutual Fishing Insurance Company, 113 Mass., 326.

But it is not clear how such interpretation is relevant in the determination of the extent of the limitation of liability under the act. This act was intended to provide a general rule whereby a shipowner might measure his responsibility for loss in certain cases.

As this Court said in The Main, 152 U. S., 122: "The real object of the Act in question was to limit the liability of vessel owners to their interest in the *adventure*." This liability alone he assumes when he becomes a part owner, and, in the absence of waiver on his part, it should not be extended to include other adventures merely because an agreement entered into between shippers and shipping agents provides that for the purposes of some particular engagement or employment a round trip or a certain number of trips shall be considered a voyage.

"Voyage is a term of recognized meaning in common parlance and has received a legal interpretation accordingly."

Valente vs. Gibbs, 28 L. J. C. P., 234.

See Parsons' Shipping and Admiralty, Vol. I, pp. 307, 308.

Re Geo. Moncan, 8 Sawyer, 353.

In proceedings to limit liability it has been repeatedly held that the freight to be surrendered is the freight *pending* for the particular trip or journey.

Thus, in the Alpina, 8 Fed., 283, Judge Blodgett says:

> "It seems to me that each voyage or trip, each separate journey, which the ship makes from one port to another, must be treated as a separate venture, involving its own particular hazards, losses, and earnings. * * * The owner, freighters, and passengers on any particular voyage may be said to have a common interest for that voyage. They may be compelled to contribute for jettisons made for the common safety under certain circumstances. But there is nothing in common between the freighters and passengers of different voyages."
>
> The Alpina, 8 Fed., 283.

And he held in this case that each daily trip constituted a voyage and that they could not be grouped together.

In The Rose Culkin, 52 Fed., 332, Judge Brown cites this case with approval, and, taking the same view, holds that each trip constitutes a voyage.

In The Mary Adelaide Randall, 93 Fed., 222, some of the definitions of "voyage," are collated and it is there held that the word in its maritime sense meant the transit at sea from one terminus to another; and the Court of Appeals, affirming the judgment, speaks of a voyage as signifying in its strict sense the "actual transit of the vessel from port to port." 98 Fed., 895.

In the Giles Loring, 48 Fed., 472, Judge Webb held:

> "By the charter party one-half of the freight was earned and payable on right delivery of the outward cargo from Boston to the west coast, and that half was accordingly paid. The other half was freight pending when the voyage terminated, and would be earned only on delivery of the cargo at its destination, before which it was of no value to

the owners. The City of Norwich, 118 U. S., 491, 6 Sup. Ct. Rep., 1150. As that portion of the freight was never earned, nothing is to be added on its account to the value of the vessel, for the purpose of showing the amount of the owners' liability."

The Giles Loring, 48 Fed., 472.

The object of the statute would be defeated if owners were to be held liable for the amount of freight prepaid on previous passages or trips, because, as between shipper and shipowner, the contract had stipulated that the successive trips should be treated as a single voyage.

The money paid for the crossing from Havre to New York certainly did not constitute any freight which the petitioner was bound to deposit.

Decision Circuit Court of Appeals, Record, pp. 2263, *et seq.*

La Bourgogne, 139 Fed. Rep., 433.

NINETEENTH POINT.

It is equally clear that the petitioner was not bound to surrender the prepaid passage money and freight as the same were not PENDING, but belonged to the company absolutely.

As to the claim that compensation from the French Government for the crossing from New York to Havre, during which the vessel was lost, should be included in the freight, there is no evidence that the owners received any compensation for this crossing or that the mails may not have been carried by some other steamer, and the District Court so found.

That the passage money is included under the term freight is expressly decided in The Main, *supra*.

The freight money was not actually earned under the ordinary rules of law. The petitioner claimed before the courts below that this prepaid money had in fact been returned to the parties who paid it or to their representatives.

The natural meaning of the words "pending freight" is freight dependent or contingent on the completion of the voyage. Until the voyage is completed it is not earned. That part of the contract which provides that it should not be returned, even in cases of loss, is more nearly like a contract of insurance than of affrightment. Substantially, the passengers and shippers insure the owners against loss to the extent of the money thus paid but not earned. But the owners are not obliged to surrender insurance money in order to limit liability.

City of Norwich, 118 U. S., 468.

The term "pending freight" has never been used in the cases in the sense of freight *to be* earned by the carriage of the specific goods or passengers on board the vessel at the time of the loss.

Thus in The City of Norwich, *supra*, the Supreme Court says:

> "Pending freight is of no value to the ship-owner *until it is earned*, and it is not earned, if earned at all, *until the conclusion of the voyage*. * * *
>
> If, however, by reason of the loss or sinking of the ship the voyage is never completed, but is broken up and ended by causes over which the owners have no control, the value of the ship (if it has any value) at the time of such breaking up and ending of the voyage must be taken as the measure of the owner's lia-

bility. In most cases of this character no *freight will be earned.*"

City of Norwich, 118 U. S., 468.

And in The Main, 152 U. S., 122, it is said that the property to be assessed comprises "whatever is on board for the object of the voyage belonging to the owners, whether such object be warfare, the conveyance of passengers, goods or the fisheries." The Court further says:

"The words, 'freight pending,' in Section 4283, or 'freight for the voyage,' Section 4284, were copied from the English statute of George II, which, in turn, were copied from the Marine Ordinance of 1681, and the prior Continental codes; but in both cases they were evidently intended to represent the *earnings* of the voyage, whether from the carriage of passengers or merchandise. If these words were used instead of the words 'freight for the voyage,' it would probably more accurately express the intent of the legislature."

The Main, 152 U. S., 122.

And in The Abbie C. Stubbs, 28 Fed., at page 720, Judge Nelson holds as follows:

"When a ship-owner sends his ship to sea, so far as his liability for collisions and other losses happening through the fault of those in charge of her, and without his privity or knowledge, is concerned, he puts at risk only his ship, the expense of navigating her, and the freight she may earn on the voyage. His responsibility is limited to the capital embarked in the adventure, and the profit he may gain from it in the form of freight, or its equivalent.

If the ship is sunk or destroyed, and no freight earned, his whole responsibility is at an end. If either or both are saved in whole or in part, to that extent his

liability remains. The words, 'her freight then pending,' as used in Section 4283, must at least include freight earned at the end of the voyage, for cargo on board at the time of the collision, which is this case."

The Abbie C. Stubbs, 28 Fed., 720.

Crump, in his work on *Marine Insurance* and *General Average*, says: "To constitute freight a contributing interest it must have been pending at the time of the sacrifice."

It seems most consonant with the tenor of the foregoing decisions that, unless the freight and passage money are *pending* in the sense that they are earned as the *result* of the maritime adventure, they do not fall within the terms of the statute. The case of *The Main*, *supra*, cited by counsel for claimants, does not sustain their contention, because in that case the voyage was *completed* and the freight *earned*.

In the case at bar, however, the voyage was never completed, the freight was not earned, as the district judge found, so that the petitioner should not be required to pay the amount of that freight to the trustee.

TWENTIETH POINT.

There are other questions in the case which need not, at present, be discussed at length, which your present petitioner claims should be reviewed in its behalf.

First: Were the awards made to the several claimants proper, particularly the award made to

George Deslions for the sum of Twenty-five thousand dollars?

The judges of the Circuit Court of Appeals differed radically as to the finding in support of the claim of Deslion.

Judge Coxe, writing the opinion of the Court, affirming the award to Deslions by the Commissioner, said: (The italics are ours.)

> "It must be admitted that Deslions does not appear well on paper; *he is involved in numerous contradictions and divigations; professing ignorance of matters which should be within his knowledge, and failing to remember facts which it seems incredible he should have forgotten.*
>
> Indeed, portions of his testimony evince *such recklessness and are so obviously prejudical to the success of his claim that it seems as if his conduct must be attributed to other causes than those suggested by the petitioner* —possibly to an excitable French temperament or to ignorance of our methods of procedure.
>
> Many of his lapses of memory and flippant answers were given when being interrogated regarding matters so clearly collateral that he could have answered fully and truthfully without in the least endangering his claim.
>
> His failure to do so seems hardly compatible with a deep laid scheme of perjury. *May it not rather be attributed to some form of mental abberagtion not easy to characterize from a mere perusal of the printed record?*" (Record, p. 2281.)

Judge Wallace in his *dissenting* opinion, said:

> "I cannot take the charitable view of Deslions' testimony, which seems to prevail with the majority of the Court.
>
> *The testimony is so full of falsifications that it is utterly unworthy of credit. It is apparent throughout that he has been influenced by the*

motive of withholding any information that might afford an opportunity to the steamship company to expose the fraudulent and extravagant character of his claim.

Rejecting his testimony, there is no competent evidence of the value of the property lost." (Record, p. 2290.)

And Judge Wallace voted to *reverse* the award made by the Commissioner to this claimant.

Another consideration as to this branch of the case is:

Second: Is the limitation of liability to One hundred dollars, contained in the contract of passage of the petitioner, for loss of baggage and personal effects, a good and valid limitation of liability in law?

This point was duly raised by exceptions to the Commissioner's report.

The Circuit Court of Appeals decided that it was not a good and valid limitation of liability.

The contract of passage contains a provision allowing the passenger free allowance of baggage of three hundred pounds, and provides that in case of damage or total loss the liability of the steamship company shall not exceed one hundred dollars in *first-class*, sixty dollars in *second-class*, and thirty dollars in *third-class*, unless the passenger shall have the baggage *insured* for its full value under the *open policy of the company:* and it also provides:

"III. Baggage and valuables may be insured at the current rate on the company's *open plicy*."

(Petition, p. 14.)

And also printed on the ticket, or contract of passage, in large type, is the following provision:

"On taking his or her ticket the passenger expressly agrees to and accepts all the foregoing conditions."

(Petition, p. 15.)

Twenty-first Point.

The Circuit Court of Appeals did not take into consideration, in construing the contract of passage issued by your petitioner, the provision thereof quoted above, namely, that the passenger might insure his baggage for its *full value* at the *current rate of insurance.*

It is submitted that the provisions of the petitioner's passage ticket are reasonable in every particular, and come well within the rule laid down by this Court in the case of *The Kensington*, 183, U. S., 263.

See The Kensington, 183 U. S., 263.

Surely, nothing could be more reasonable than the *current rate of marine insurance.*

The passenger is not bound to insure his baggage at an arbitrary fixed rate of insurance, *but is allowed the benefit of the rate of insurance existing at the time his contract of passage is made.*

FINALLY.

The foregoing considerations abundantly justify the present application; and your petitioner requests it should have a counter writ of certiorari, and the privilege of arguing at length the points mentioned in the present petition and brief, and such other points as may appear upon the record at the final hearing.

Your petitioner, therefore, prays:—

1. That a writ of certiorari may be issued in aid of and in addition to the one already granted to bring before the Court such part of the record in the Circuit Court of Appeals as may have been omitted by the petitioners, Deslions, et al., and Perry, et al. And

2. That your petitioner may, on the final hearing, be permitted to assign error, not only as to the matters enumerated in the present petition, but as to such other matters as may appear on the record at the final hearing.

WM. G. CHOATE,
EDWARD K. JONES,
Of Counsel.

Supreme Court, U. S.
FILED
MAR 11 1907
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1906.

No. [redacted] 33.

IN THE MATTER

of

DESLIONS, et al., and of
THE COUNTER-PETITION OF LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

MOTION AND NOTICE TO OPPOSING COUNSEL.

WM. G. CHOATE,
EDWARD K. JONES,
Of Counsel for Petitioner.

Supreme Court of the United States,

OCTOBER TERM, 1906.

In the Matter of DESLIONS, *et al.*, and The Counter Petition of La Compagnie Générale Transatlantique for a Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.	No. 293.

And now comes La Compagnie Générale Transatlantique, the petitioner in the above entitled matter, this 11th day of March, 1907, and moves the Court now here, for its instruction and decision as to whether or not, on the final argument of this case, the Court will allow a discussion of the questions which have been presented upon the counter-application for a writ of *certiorari*, by brief or otherwise, or whether the discussion of the case is to be confined to the questions arising under the writ of *certiorari* heretofore granted in behalf of Deslions, *et al.*

WM. G. CHOATE.
EDWARD K. JONES.
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1906.

In the Matter

of

DESLIONS, *et al.*,

and

The Counter Petition of La Compagnie Générale Transatlantique for a Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

No. 293.

Sirs:

Please take notice that on Monday, the 11th day of March, 1907, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, we will move the Court for its instruction and decision as to whether or not on the final argument of this case the Court will allow a discussion of the questions which have been presented upon the counter-application for a writ of *certiorari*, by brief or

otherwise, or whether the discussion of the case is to be confined to the questions arising under the writ of *certiorari* heretofore granted.

Dated, New York, March 5th, 1907.

WM. G. CHOATE,
EDWARD K. JONES,
Counsel for Petitioner.

To
Messrs. Benedict & Benedict,
Proctors for Deslions, *et al.*
and
A. Gordon Murray, Esq.,
Proctor for Perry, *et al.*

(Endorsed)

UNITED STATES SUPREME COURT,

OCTOBER TERM, 1906.

In the Matter

of

The Counter-Petition of La Compagnie Générale Transatlantique for a Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

Notice.

Edward K. Jones,
Proctor for Petitioner,
25 Broad Street,
New York.

Service of a copy of the within notice admitted this 6th day of March, 1907.

Benedict & Benedict,
Proctors for Deslions, *et al.*

A. Gordon Murray,
Proctor for Perry, *et al.*

Office Supreme Court U. S.
FILED
MAY 11 1906
JAMES H. MCKENNEY, Clerk.

UNITED STATES SUPREME COURT.

In the Matter

of

The Petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne,* for limitation of liability and other relief.

No. 33.

The French steamship *La Bourgogne,* owned by La Compagnie Generale Transatlantique was lost at sea July 4th, 1898, after a collision with the British sailing ship *Cromartyshire.* The said steamship became a total loss with her cargo and the loss of 550 lives.

The owner began a proceeding in the United States District Court for the Southern District of New York to obtain a limitation of liability pursuant to statute. The District Court decreed a limitation; on appeal to the Circuit Court of Appeals for the Second Circuit, the decree was somewhat modified by that Court, fixing the amount of the pending freight, and now comes this petition for a writ of *certiorari* from this Court to review that determination.

Brief on behalf of W. C. Perry as administrator; John Perry; Pauline Henuy, as administratrix, and others, in support of the petition for the writ of certiorari.

Joseph H. Choate and **A. Gordon Murray** on behalf of such petitioners.

This Supreme Court, in the case of *The Main*, 152 United States, 122, held that the words "*freight pending*" in the statutes providing for limitation of shipowners' liability, includes "passage money" and "freight prepaid at the port of departure."

Notwithstanding that clear determination the petitioner in the above entitled cause sought to obtain in the Courts below, limitation of its liability for the loss of its steamship *La Bourgogne*, without surrendering to the Trustee such "passage money" and such "freight prepaid at the port of departure."

This is in clear violation of another decision of this Court, the case of Norwich Transportation Company *vs.* Wright, 13 Wall., 104, where it was said at p. 124:

> "But in order to proceed regularly the Court must have possession of the fund,—that is the proceeds or value of the ship and freight. It cannot distribute a fund which it has not in possession."

Such "possession" neither of the Courts below have ever had nor at the time of this writing have they now.

The petitioners' counsel through the course of this protracted litigation has in the face of these settled rules insisted that because the petitioner had chosen under Admiralty Rule 54, the right to make a transfer of its interest in the ship and her freight for the voyage, to a trustee, that its duty was performed by presenting to the trustee an "indenture of transfer" and that it thereupon became such trustee's duty to get possession of the fund or the *res* as best he could, and in the face of the decision in *The Main* he has insisted that neither passage money, prepaid freight nor compensation received for carrying the mail is "pending freight," "freight for the voyage," or as called in *The Main* "earnings for the voyage."

If there had been a *bona fide* question as to that, Admiralty Rule No. 54 has provided for a proper proceeding under such circumstances, to wit, an appraisement of the amount or value of the interest of the owner in the ship or vessel, and her freight, for the voyage.

That proceeding the petitioner did not take; it chose rather to make a paper transfer and deliver nothing; it thus kept back and retained the passage money, the prepaid freight, and the compensation received for carrying the mails.

The petitioner's counsel in the Circuit Court of Appeals sought to justify his course by saying that the District Court Judge had sustained him.

What little consideration the District Judge gave to the question may be seen from the language which he used in closing his opinion. He said (fol. 3774, p. 1263):

> "Inasmuch as the only time permitted for its disposition (the case) has been during the crowded week in which my term of office as

> District Judge expires, it has been impossible to give the full consideration to the complicated questions of fact and law which the importance of the interests involved demand and would *otherwise* have received."

We now come, therefore, to this Supreme Court and complain to it that the courts below have granted to this shipowner a limitation of liability without compelling a surrender of the "vessel and freight for the voyage."

It seems to these humble petitioners, that this is a grievous error, that it is without authority of law and is in disregard of the plain meaning of the statute and the many decisions of this Court.

> *The Main, supra.*
> Norwich Company *vs.* Wright, *supra.*
> O'Brien *vs.* Miller, 168 U. S., 287-9, 303.

Furthermore, it presents a question of the first importance involving as the case does, a flagrant disobedience to law and complete immunity from any evil consequences thereof to the wrong-doer.

As the case stands the petitioner's immunity is complete and the damage-claimants are without redress, except by this application to this high court.

It has been determined by the courts below that the *Bourgogne* was at fault for grossly excessive speed in dense fog. The Circuit Court of Appeals held that the liability should be limited to the passage and freight moneys prepaid at the port of New York, amounting in all to some 113,419.57 francs with interest from the date of the disaster but neither Court would require such amount to be placed in the registry of the Court.

The Court of Appeals would not hold the petitioner liable to the prepaid passage and freight money at the port of departure on the voyage on which she was lost, Havre, France, nor for the compensation which the petitioner had actually received for carrying the mail and which was duly paid.

We humbly represent that the Circuit Court of Appeals has in this matter also committed grievous error disregarding the plain meaning of the statute and the previous decisions of this Supreme Court.

We furthermore humbly represent that the Courts below have in granting to the petitioner any limitation of liability whatever, grievously erred and have not given proper weight to the evidence adduced against such right to limitation of liability.

The questions which therefore are presented by this application may be enumerated concisely as follows:

First.—Did not the Courts below proceed contrary to law in decreeing a limitation of liability to the owner of the *Bourgogne* without compelling such owner to actually pay to the Trustee the freight for the voyage.

Second.—Did not the Courts below grievously err in not holding that the words "freight pending" and "freight for the voyage," include freight and passage money prepaid at the vessel's port of departure on the voyage on which she was lost, and limiting the word voyage to one leg of such voyage, and by justifying their holding on the theory

that the passengers and merchandise for which such freight was paid were no longer subject to the risks of the voyage.

The statute fixes the limitation of liability fund to the "amount or value of the interest of such *owner* in such vessel and her freight then pending." It is not the interest of the passengers or shippers whose lives or merchandise were at risk.

Third.—Did not the Courts below grievously err in not holding that the words "freight pending" and "freight for the voyage" include the compensation paid to the owner by the Government of France for carrying the mail under a contract with such government and by justifying their holding on the theory that the contract was in such terms that the Court could not tell what portion of the annual allowance was apportionable to a single voyage.

The contract called for 52 voyages going and returning from Havre, France, to New York, and the Petitioner stated that it had "received 5,473,400 francs which was the annual allowance" and *La Bourgogne* was performing "voyage No. 27" for the year 1898.

Fourth.—Did not the Courts below grievously err as a matter of law in holding on the evidence that a transatlantic steamship company, operating a regular line of high powered passenger steamships between Havre, France, and the port of New York, which had issued to the commanders of its vessels a book of rules and regulations prescribing rules for

navigation in foggy weather, and such Company's steamers having in four recorded cases been shown to have been in fault in violation of such rule and the law for excessive speed in fog and in three of them the Company having been condemned in damages by the Courts which investigated the accidents, and such Company having taken no disciplinary action against the respective captains of such steamers nor having made any new rule or regulation nor issued any other or further instructions in regard to the navigation of its vessels in foggy weather, was without privity, or knowledge within the meaning of the statute, in a fifth case (the one at bar) occurring under exactly similar circumstances and conditions and that such Company is entitled to limit its liability under the statute to the ship and freight contemplated in the statute.

Fifth.—Was the *Bourgogne* provided with the boat and life raft capacity required by statute.

Section 4488 of the Revised Statutes requires ocean steamers to have the life boats and life rafts which will best secure the safety of all on board. The *Bourgogne* had 714 persons on board and a life boat and life raft capacity of 658 persons.

The Circuit Court of Appeals apparently sought to hold that the statute did not apply to "foreign private steam vessels". The Court overlooked the fact that the amendment of August 7th, 1882, specifically made *Foreign* vessels subject to Section 4488 and brought it within the principle of Section 4493.

We humbly submit that the questions presented by this application are of such importance that this Honorable Court should give them its especial consideration, to the end that these damage claimants may not be prejudiced by a judicial decree which is contrary to the law of the land.

FIRST QUESTION.

Should not the Court have had possession of the fund in order to proceed regularly?

This Court has said that it should.

> Norwich Company *vs.* Wright, 13 Wall., 104.

The Courts below have been asked to do exactly what it was there said the Court could not do, to-wit:—"distribute a fund of which it had not possession."

This litigation has been carried to the very end and the rights of the various parties adjudicated, yet the Court is not in position to distribute the fund. It has still to get possession of the fund. How is it going to do it?

We think the Courts below have proceeded without due regard to the prior adjudications of this Court and we now pray this Court to give us the only redress open to us by appeal to this Court.

SECOND QUESTION.

"Freight pending" and "Freight for the voyage" mean earnings of the vessel for the voyage. Therefore, what was the "voyage" and what were the earnings?

In this case the owner of the *Bourgogne* was under contract with the French Government to make "a voyage" from Havre to New York and back to Havre. That was not only its contract, but all the business of the owner was conducted on that basis. It employed its crew for a voyage from Havre to New York and back to Havre. Its ship was inspected for a voyage from Havre to New York and back to Havre. It directed the log of the ship to be but one from Havre to New York and back to Havre. The Master of the ship made one report of each voyage from Havre to New York and back to Havre. The owner gave one number to each voyage from Havre to New York and back to Havre.

It kept the accounts of each voyage from Havre to New York and back to Havre separate from the accounts of each other such voyage.

It never in any particular treated the trip from Havre to New York as a separate voyage from the trip from New York to Havre. It always declared that those two trips constituted one voyage, and always treated them as one voyage.

Every fact in the case, upon which facts, as the Court has said, the meaning of the word "voyage" depends, gave to the word the meaning "from Havre to New York and back to Havre," and that meaning only.

The Court below by its decision has disregarded these facts and has cut this voyage in two and decided that each half was a whole. We urge that it was bound to accept the contract, the statements and the action of the owner, there being no disagreement or inconsistency as to these facts.

a. The Court said that "the word 'voyage,' like so many other words is somewhat elastic. The meaning to be given to it in any particular case is largely dependent upon the facts of that case," and thereupon held that the voyage in this case was the trip from New York to Havre and that the trip from Havre to New York was no part of the voyage, notwithstanding the above enumerated facts.

The Courts of Appeals then went on to say, "When cargo and passengers are safely landed in New York all their risks of the crossing are over, the adventure *as to them,* and for which they paid freight and passage money, is fully terminated."

But the question is not at all when "the adventure" is terminated *as to the cargo and passengers.* The question is, "When does the adventure begin, and when is the adventure terminated *as to the owner of the ship.*" And that question is not at all affected by the termination of the adventure as to any passenger or any piece of cargo.

Where any liability has arisen against the owner of a ship during a voyage, that owner, if he desires to limit that liability, must pay over *all* the freight and passage money which have been earnings of that voyage, or of *any part* of it. Whether the risks run by any cargo or passenger, whose freight or passage money became part of

such earnings, have or have not terminated, has nothing to do with the question as to what is the voyage, or what must the owner turn over. The owner's risk for his liability has not terminated till the determination of the voyage *as to him.* The question is this, "When did the voyage, the adventure, begin *as to the owner,* and when did it end, *as to the owner?*"

Now this Supreme Court in the case of *The Main, supra,* clearly takes this view of the statute when it said, "The real object of the act in question was to limit the liability of vessel owners to *their* interest in the adventure."

We rest this question then with the query what has the risks of passengers or shippers got to do with the owner's interest under the words of this statute.

The French company sent "*La Bourgogne*" from Havre on voyage No. 27 but before she completed voyage No. 27 she was sunk and because she had delivered her outward cargo and passengers and mails at New York its interest in the adventure was we submit none the less diminished thereby.

We contend that the sum of 58,568.65 francs collected and received at Havre prepaid passage and freight money at the vessel's port of departure is properly a part of the limitation of liability fund and that it should have been so held.

The Main, supra.
O'Brien *v.* Miller, 168 U. S., pp. 306-7.
Pacific Coast Co. *v.* Reynolds, 114 Fed. Rep., 877; 187 U. S., 640.

THIRD QUESTION.

Compensation paid for carrying the mails is a part of the "earning for the voyage" whether called "freight pending" or "freight for the voyage."

The company in answer to certain interrogatories addressed to it and annexed to the answer of Perry and others disclosed the following state of facts:

"*Twelfth*:(*a.*) Was there not in force in July, 1898, an agreement between the company and the French Government whereby the company received or was receiving a money compensation for certain services performed?

Answer: (*A.*) Yes.

(*b.*) Was such agreement in writing? If so, annex a copy to your answer or state it in full, and if not in writing state the substance thereof.

(*c.*) If it was a statute, decree or other Act of Government, annex a true copy of same to your answer hereto or state it fully.

Answer: (*B.*) Yes. We annex to our answer the pamphlet containing the Laws of June 24, 1883, concerning the Postal Maritime Service between Havre and New York and conditions of contract for the exploitation of the service (fol. 419).

Thirteenth.: (*a.*) Was such compensation from

the French Government received for carrying the mails on the company's steamers?

Answer: A. Yes.

(*b.*) What was the compensation received, and was it figured on the basis of a yearly allowance or so much per voyage, or what basis?

Answer: B. In 1898 the company received 5,473,400 francs, which was the annual allowance.

(*c.*) Did not such compensation and agreement provide for fifty-two voyages per year from Havre to New York and back to Havre?

Answer: C. Yes.

(*b.*) What was the number of said voyage?

A. Number 27.

The question then is:

Is not the proportionate amount, received by the Company under the contract with the Government of France, a part of *La Bourgogne's* earnings for the voyage? because

(a.) The evidence shows that the Compagnie for that year received "the annual allowance" for fifty-two voyages. (Perry Interrogatories Twelfth and Thirteenth, fol. 302-4, and answers thereto, fol. 441).

(b.) It thus appears that the Compagnie received the amount which it would have received had *La Bourgogne* not been lost.

(c.) The contract itself provides how and when deductions are to be made, and the Court below was in error in assuming that the contract provided for carrying the United States mail from New

York to Havre or that deductions for this voyage had been made.

(d.) The steamer delivered the mail in New York and proceeded to complete the voyage under the contract. None of the specified causes for deductions having arisen, no deductions were allowable or made. No other ship was substituted to complete this voyage.

If any deductions had been made it was for the Petitioner to give proof of it. But the Petitioner testified that it got the *annual allowance.*

(e.) By the terms of the contract it is divisible, and payments are made monthly. Therefore, we think the Court overlooked the palpable conclusion that a limitation of liability was granted without the owner being required to surrender the whole of its interest in the ship and freight pending, or for this voyage, or what the Supreme Court in *The Main* called "earnings" of the voyage, or what the definitions call "rewards, hire or compensation paid for the use of ships.'

Kent, Vol. III, p. 279, 7th Ed.
Bouvier, "Freight."
The Main, supra.
Miller *v.* O'Brien, 168 U. S., 306-7.

Furthermore, the Court was, we think, in error in holding that the "compensation for the whole service fixed at 5,480,000 francs" covers the pay for reserved ships. The contract does not provide for reserved ships, but allows the contractor (Art. 19) to replace a lost ship by another one although not fulfilling in all respects the conditions required. And as for extra services Chapter VIII, Articles 34-39 of the contract (Supplemental Re-

cord, (fols. 7007-18), and Chapter XII, Articles 50-53 (fols. 7031-8), specifically *provide for extra compensation* in all such cases, including that of taking the ships in case of war "as well as in every extraordinary political circumstance."

We claim therefore that the Court was perfectly capable of dividing the amount of the annual allowance by 52 to get the amount that this ship earned under this contract and that it was a grievous error that it did not do so.

If, therefore, Chancellor Kent's definition is correct that the word freight is to be applied to all "rewards or compensation for the use of ships," and Mr. Justice Brown's words in the *Main*, p. 129, to wit:

"It is to be applied to all rewards, hire or *compensation*, paid for the use of ships; either for an entire voyage, one divided into sections or engaged by the month or any period," is not to be disregarded, this is freight and as such, the proper proportion of it should have been surrendered to the Trustee as part of the limited liability fund, on which its right to maintain this proceeding is based but which it has knowingly concealed and falsely sworn it had not.

As the *Main* is controlling authority on this point, the words of the Supreme Court in another case, to wit: O'Brien *vs.* Miller, 168 U. S., at pp. 306-7, would express exactly the judgment to be passed in this case. That Court said:

"We conclude, therefore, that the owner (who retains the sum of damages which have been awarded him for the loss of his ship and freight) has not surrendered the amount or value (see 4283) of his interest in the ship; that he has not *given up* the value of the vessel (Sec. 4284); that

he has not transferred 'his interest in such vessel and freight' " (Sec. 4285).

The only difference in that case and the one at bar is that there was the value of the damage to a vessel and freight; here the money was actually collected, received, and in possession.

We ask what possible escape is there from these controlling authorities. They are the cases on which counsel for the claimants have relied. They should have been likewise the guide to the petitioner in its quest for the extraordinary relief provided by the statute.

FOURTH QUESTION.

The losses did not occur without the "knowledge, or privity of the owner."

In the case of District of Columbia *vs.* Armes, 107 United States, 519, this Court said, quoting an Illinois case, p. 526:

"If another person had met with a similar fate at the same place and from a like cause, it would tend to show a knowledge on the part of the City that there was inattention on the part of their agents," &c., &c.; and at p. 525 it was said:

"Besides this, as publicity was necessarily given to the accidents, they also tended to show that the dangerous character of the locality was brought to the attention of the city authorities."

The principle is exactly the same as the issue in this limitation of liability proceeding is "knowledge" on the part of the corporation's officials.

The Republic, 61 Fed. Rep., 109.

In the case at bar the Company was shown to have had through the logs of its various steamers exact information conveyed to it of the conduct of the commanders of each of its steamers on every voyage including the speed of such ship and the weather it encountered and it appeared that the regular trip of "liners" could not be made in prescribed time, except upon a violation of the law in regard to speed in fog when there was fog, and various witnesses testified to their experiences on such company's steamers in times of fog, and the petitioning company refused to produce its logs, even though the Court made an order that it do so.

The general practice of such "liners" in such cases has been recognized in this Court.

The Umbria, 166 U. S., 404.

The Circuit Court of Appeals in this case has misapprehended the evidence and has held that a series of accidents such as appears by this record are not especially important, and that "they lose all persuasiveness" because on two subsequent occasions the company's steamers were found to be free from fault.

This is a misapprehension of the evidence and is an unfortunate error.

The cases referred to grew out of a series of collisions of the petitioner's vessels and were:

La Bretagne with the *Tellus,* May 7, 1887.
La Normandie with the *Charlotte Webb,* May 18, 1889.
LaTouraine with the *Sully,* September 10, 1894.
La Champagne with the *Ville de Rio.*

The opinion states that the collision of the *Champagne* with the *Ville de Rio* happened "July 4, 1898," *subsequent* to the collision of *La Touraine* with the *Sully*, September 10, 1894."

That is a mistake.

The collision of the *Champagne* happened many years before, in 1887. The decision is published in Vol. III Revue International du Droit Maritime, pp. 300 and 543, which volume itself bears date of 1887-88. The *Champagne* case was not decided on the question of her excessive speed. The Court held that the speed of the *Champagne* was not a contributory cause, but that the *Ville de Rio*, by *reason of her having changed her course*, was solely to blame.

It appears (fol. 3647) that when the *Champagne* came into the fog, she slowed to *fourteen knots*, and maintained that speed until at the *sound of the Rio's whistle*, she reduced to *ten knots*, and again to *seven knots*, when the *Rio threw herself on the Champagne* (fol. 3648).

Thus it appears that that case is evidence of claimant's contention that *fourteen knots* in fog was practiced by the commander of the *Champagne*, that the Company knew it and acquiesced in the practice by not forbidding it.

That case does not detract from the knowledge given to the Company by the other decisions, as the opinion seems to hold that it does, but strengthens their weight, and it did not happen after the others, but was one of a series of which the *Bourgogne* was the last.

As to the collision of the *Bourgogne* with the *Ailsa*, it is not at all in point, nor did it happen under similar circumstances. That collision was not at sea, but took place in New York Harbor when the *Bourgogne* was groping around in a

fog to find anchorage ground, and she was proceeding at about six knots.

The question in the case at bar is simply this: Did the petitioner know that its captains ran its steamers in violation of law? We say that it did, because

First.—It had the logs and the *Rapport du Capitaine,* from which to obtain such knowledge. It would not produce those logs nor allow an inspection of them, although the Court ordered their production. A copy of the Rapport is in evidence (fol. 3629).

Secondly.—It had been condemned in damages three separate times by competent tribunals for such violations and knew that *fourteen knots,* or "a diminution of a few knots from the maximum" was not a reduction to the moderate speed the law requires. This very collision shows that the practice was continued, and that the petitioner, by its inaction and neglect to take any means to enforce its regulation or the law, has, to use Mr. Justice Lacombe's words, encouraged or sanctioned, or knowingly tolerated its violation.

We urge that under the facts of this case the Company was directly responsible for this accident.

The regulation which the Company had in the hands of its captains was contained in what is known as Article 395 of the "Reglement du Service a Bord" and is as follows:

"In conformity with the Articles of the International Regulations, having for object the prevention of collisions,

'All vessels under steam which approach each other so that there may be a risk of collision, must diminish their speed or stop and go backwards if

necessary. All vessels under steam must during foggy weather preserve a moderate speed.'

The captain, under these circumstances must diminish the speed of his engine and in agreement with the Agent of Postes, the captain must make known, by process verbal the delays which such manœuvres may have occasioned."

The company's instruction therefore is that in foggy weather the captain must diminish the speed of his engine and that is the only one. It does not say that the captain must maintain a "moderate speed" but says that he must "diminish the speed."

Now the Company knew that simply to "diminish the speed" was not enough. It learned that decisively from the opinion expressed by the French Court in the case of the *Touraine* (Respondent's Exhibit "A," fol. 3477, at fol. 3487), as follows:

"As it ought on the contrary to be determined that the moderate speed prescribed by the regulation is not, in time of fog, a speed reduced by some knots from the maximum, which a vessel can attain."

The same has been the determined law in our courts for many years. The Court below itself has said, speaking through Mr. Justice LACOMBE:

"Whatever may be the demands of passengers, freighters and postmasters-general as to maintaining the highest speed attainable, controlling authority has prescribed that speed in fog must be moderate; and however difficult it may be to define the word 'moderate' with mathematical precision, it is abundantly settled by similar authority *that a simple reduction of but 1 knot from a full speed of 16 is not in compliance with the rule.*"

The *Saale*, 63 Fed. Rep., 478, p. 480.

Citing:

The *Pennsylvania,* 19 Wall., 135; the *Nacoochee,* 137 U. S., 330; the *City of New York,* 147 U. S., 72.

Similarly:

The *Trave,* 68 Fed. Rep., 390.

Yet with this public law so clearly settled the company only instructed its captains that in foggy weather they must "diminish the speed of their engines" as a compliance with the International rule that it must be "moderate."

The captain of the *Bourgogne* was only following his instructions. As found by the Court he had apparently "diminished his speed," but as he had not got down to "moderate" the fault was his employers and not wholly his for which his owners would be exonerated by this statute.

The Circuit Court of Appeals said that it did not think such a construction was "fair." It was, nevertheless, the construction which the captains themselves put on the rule as evidenced by their continued practice. We humbly submit the matter to this court; and pray that it receive this court's consideration.

FIFTH QUESTION.

La Bourgogne did not have the boats required by law.

Section 4400 U. S. Rev. Stat., as amended August 7, 1882, makes Sec. 4488 applicable to "foreign

private steam vessels" and Section 4488 provides that every steamer navigating the ocean "shall be provided with such numbers of life boats, floats, rafts, life preservers and drags as will best secure the safety of all persons on board such vessels in case of disaster.

The opinion of the Circuit Court of Appeals says, substantially, that U. S. Revised Statutes, Section 4493, does not apply to "vessels of other countries."

The claim is not that *Bourgogne* was in violation of Sec. 4493, but that she was actually in violation of 4488, and consequently is subject to the general rule of law as stated in Sec. 4493.

The Court below apparently overlooked the fact that the amendment of Aug. 7th, 1882, specifically makes *Foreign* vessels subject to Sec. 4488 and brings it within the principle of 4,493.

Subd. 2 of Rule III of the Board of Supervising Inspectors of Steamboats determines the capacity of life boats and life rafts and subd. 12 sets forth a table by which to apply that rule according to the tonnage of the vessel. The claimants contention has always been that while *La Bourgogne* had life-boat capacity for some 660 persons she actually had aboard 714 persons. If our claim is right in this respect, the owners of *La Bourgogne* are certainly chargeable with liability for the deaths of some 54 persons, who under no circumstances could have been saved when the vessel went down. The company is chargeable directly because such losses cannot be considered to have been without the owners' "knowledge or privity."

We therefore urge upon this court the importance of its giving to the case here presented its distinguished consideration because of the mani-

fest importance of the questions here presented and which we have endeavored above to succinctly impress on your Honor's attention to the end that this court's writ of certiorari may forthwith issue as prayed for in the petition therefor herewith presented.

Respectfully submitted,

A. Gordon Murray,
Proctor and Advocate for Perry,
Henuy and others.

Joseph H. Choate,
of Counsel and Advocate.

Office Supreme Court U. S.
FILED
MAY 11 1906
JAMES H. MCKENNEY, Clerk.

United States Supreme Court.

In the Matter of the Petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "Bourgogne," for Limitation of Liability and other relief.

No. 33.

Brief on Petition for Certiorari.

In support of the petition for a certiorari filed herewith, we beg leave to present to the Court the following argument for Petitioners.

The case presents, among other questions, a difference of decision between the Circuit Court of Appeals of the Second Circuit and other Circuit Courts of Appeals as to the burden of proof in proceedings to limit the liability of ship owners, which difference this Court should determine.

It presents a question as to the requirement of the Rules of this Court as to what are necessary preliminaries to the commencement of a proceeding to limit liability.

It presents the question whether an ocean passenger steamer having on board 714 persons, but having life boats and rafts only sufficient for 658 persons, is complying with the requirement of Section 4488 of of the Revised Statutes.

It presents a question as to the powers of the Board of Steamboat Inspectors over foreign passenger steamers.

It presents a question as to what requirements of United States Statute are incumbent upon foreign passenger Steamers.

It presents a question as to whether the burden of proof in a limitation of liability proceeding is upon

the ship owner or upon the shipper or passenger under the Harter Act.

These questions are not the only questions involved in the case, but the fact that they are involved is abundant justification for the request that this Court shall by certiorari bring the case before it for review.

The action and decision of the Circuit Court of Appeals on all of the questions embodied in the petition was erroneous, as we proceed to show:

FIRST QUESTION.

Is a ship owner, who is a Petitioner for limitation of liability under the Statute, entitled to carry on his proceeding to obtain such limitation of liability without having put the Court in possession of the limited liability fund?

The Statute and the Rules require that a ship owner, who asks to limit his liability, shall bring into Court the limited liability fund. If his vessel is extant, he either *by order of Court* surrenders her and the freights to a Trustee appointed by the Court, or *by order of the Court* obtains an appraisal of her and the freight, and gives a stipulation to pay in the appraised value when ordered. The stipulation in the one case, and the fund in the hands of the Trustee in the other, constitutes the limited liability fund.

And it is by Supreme Court Rule 54, "*on compliance with such order of the Court*," that the Court is to issue a monition calling into the Court all parties interested in the fund thus constituted.

In the present case the Petitioner elected to make

a transfer to a Trustee. On its application the Court appointed the Clerk, Mr. Lyman, a Trustee, and to him the Petitioner executed a conveyance of its interest in the "Bourgogne" and "in the freight for the voyage." And the Petitioner delivered to the Trustee a boat and a life raft which had belonged to the "Bourgogne," and which after her loss had been brought to New York, and whose presence in this District were claimed to give the District Court of the Southern District jurisdiction of the cause. And thereupon the Court made an order for a monition and injunction (the order stating that a surrender of the Petitioner's interest in the steamship and her pending freight had been made), and the monition was issued and the injunction made, and the cause proceeded.

When it appeared by the answers of the Petitioner to interrogatories addressed to it that the Petitioner had received large sums of passage money and freight for the voyage in question, a motion was made that the Petitioner should pay the same to the Trustee.

The District Judge, for reasons of his own, but never made known, *declined to decide the motion.* The matter was, therefore, *perforce*, left in that position till the trial before the District Court, before whom that motion was renewed, as preliminary to the trial.

But the District Court denied the motion, holding that the Petitioner was entitled to limit its liability to the $100, the value of the life boat and raft.

On the appeal the Circuit Court of Appeals on June 24th, 1905, filed its opinion reversing that decision, and holding that the Petitioner "should pay over to the Trustee" the prepaid passage money and freight from New York to Havre, 113,419 francs, with interest.

But that has not been done and the Circuit Court of Appeals declined to order the payment, and, notwithstanding the objection of the claimants that the Petitioner should not be allowed to proceed in

the cause until such money had been paid to the Trustee, allowed the Petitioner to proceed. The question was first presented to the Court by motion in October, 1905, and again by a motion made at the argument (based on the certificate of the Trustee that no money had been paid to him), that the cause should not proceed till such payment.

(a) Now we claim that it is settled law that in limitation of liability proceedings, where the Petitioner elects to transfer his interest to a Trustee, such transfer *and actual delivery* is an essential preliminary to any step in the proceeding. By Supreme Court Rule 54 the Court is directed to make an order for such transfer and it is only "*upon compliance with such order*" that the Court is directed by the Rule to issue its monition and injunction.

The decisions of this Court are unequivocal to that effect.

In Norwich Co. *vs.* Wright (13 Wall., 124) this Court said: "In order to proceed regularly the Court must have possession of the Limited Liability fund."

And in *Ex parte* Slayton (105 U. S., p. 452) this Court said: "Any Court which gets *actual possession of the things to be transferred and about which the concourse of claimants is to be had* is a Court of competent jurisdiction. * * * No monition can properly issue either under our rules or otherwise *until this jurisdiction of the thing* has been in some way *secured.*"

If the Petitioner had prayed for an appraisal and offered to give a stipulation for value, it could not have obtained the monition and injunction till it had given the stipulation. It did not do this, but elected to surrender to a Trustee. Not till such surrender would the Court obtain jurisdiction of the *res.*

Now, in view of the refusal of the District Judge to decide the motion that was made and of the decision of the District Court on the trial that this

freight and passage money received by the Petitioner in New York was not part of the limited liability fund, the Court would hardly think it just to hold that the issuing of the monition and injunction herein was entirely unauthorized; for the Petitioner did deliver to the Trustee *part of* the limited liability fund. But when the Court held that the Petitioner had not delivered to the Trustee *the whole* of the fund, it became at once incumbent upon the Petitioner to deliver to the Trustee the whole of it. And the Petitioner should not have been allowed to proceed a step without such payment.

As it is, the Petitioner has been allowed to hold its injunction against these parties and to proceed in the cause ever since July last without having done what this Court has declared to be an essential preliminary step to the commencement of any proceeding at all.

The refusal of the Circuit Court of Appeals to compel the Petitioner to do what it should have done at first, as this Court so clearly declared, was an error in law and a wrong to the claimants, which this Court should at once rectify by bringing the cause within its power and making an order in reference to that payment.

The proceeding in Limitation of Liability is very favorable to the ship owner and very burdensome to the sufferers. If this action of the Circuit Court of Appeals is allowed to remain and a ship owner is allowed to maintain such a proceeding without putting the fund in Court, and thus to throw upon the sufferers the additional burden of the risk of solvency of the ship owner, a great injustice is done to the injured parties.

SECOND QUESTION.

Is the requirement of the Statute and the Rules that the Owner-Petitioner must as a preliminary to his proceeding transfer to a Trustee appointed by the Court "his interest in the vessel and freight" complied with by the execution and delivery to the Trustee of a paper transfer of such interest, without the actual delivery to such Trustee of the vessel and freight and the transfer of the whole thereof?

It was claimed by Petitioner's counsel in this case that, the Petitioner having delivered to the Trustee the paper transfer, it became the duty of the Trustee to compel the delivery to him of whatever the paper transfer purported to convey, instead of its being the duty of the Petitioner to make actual delivery of it.

The action of the Circuit Court of Appeals in refusing to compel the Petitioner to make delivery to the Trustee of the passage money and freight which it had held that the Petitioner "should pay to the Trustee," and its proceeding with the cause notwithstanding such payment had not been made, seems to hold that such actual delivery is not necessary.

The Petitioner has had all the benefits of a limitation of liability for nearly eight years, stopping all the proceedings which had been begun in over fifty suits against it, while keeping in its possession 113,419.57 francs, which the Court has held that it should pay over and which, under the decisions of this Court, above cited, it should have paid at the outset.

That the making and delivery of the paper transfer was not sufficient was expressly shown in Benedict's Admiralty, § 568, and that proposition has not been questioned until the present case.

This Court should take the opportunity to settle the practice, not only for this case, but for all future cases.

THIRD QUESTION.

Is the question, What is the "voyage"? for which under the Statute the limitation is allowed, and the freight for which "voyage" is to be included in fixing the limitation, to be determined in accordance with the contract made by the owner before the voyage under which his vessel was navigating at the time of the disaster, and his course of business in accordance therewith, or is it to be determined by the Court on considerations outside of such contract and course of business?

The facts on which this question arises are undisputed and are as follows:

"The Bourgogne" was either making a "voyage" from Havre to New York and back to Havre, or a "voyage" merely from New York to Havre. It was the earnings of this "voyage," whichever it was, that the Petitioner was bound to surrender, in order to obtain a limitation of its liability. The Circuit Court of Appeals has held that the latter was her "voyage."

The Petitioner had contracted with the Governernment of France as follows:

"Specifications for the exploitation of the Postal Maritime Service *between Havre and New York.*

ART. 1. The service to be executed includes a weekly line from Havre to New York, or 52 *voyages going and returning* per year.

The distance to be traveled is 3,130 miles *per crossing* and 6,260 sea miles *per voyage, going and returning.*" The Bourgoyne was making one of those 52 *voyages.*

Moreover, the Petitioner in its answers to the interrogatories conclusively showed that the voyage was from Havre to New York and back to Havre and was one of the 52 voyages. It was asked in the Deslions interrogatories (Int. 5) when the year, during which it had contracted to make 52 voyages, began and ended, and it answered, that it began on July 22d, 1897, and ended on July 22d, 1898.

It was then asked (Int. 8) if each voyage of each steamer was numbered, and it answered Yes. It was asked what was the number of the voyage of the "Bourgogne" on which she was lost, and it answered that it was No. 27 for the year 1897-1898.

It was asked if each sailing of each steamer from Havre to New York *and back* to Havre was *treated as and called* one voyage, and it answered Yes.

It was asked were not the accounts of *every such voyage from Havre to New York and back to Havre* kept separate from the accounts of the other voyages, and it answered Yes!

In answer to the 11th interrogatory put on behalf of Pauline Henuy it answered that the number of the voyage was No. 27, and that the "Bourgogne" had left New York for Havre.

In answer to the 13th interrogatory (fol. 304) it answered Yes to the question whether the compensation and agreement provided for "fifty-two voyages per year from Havre to New York and back to Havre."

> Now, if the number of the voyage was 27, it is plain that each *crossing* was not counted as a voyage, because, as Havre was the starting point, each crossing from Havre to New York would be an odd number, and *each crossing from New York* would be an even number. Therefore the crossing from New York could not be No. 27.

Moreover, No. 27 could not have been the number of either the voyages or the crossings of the "Bourgogne" made by her during that year, for she was put out of commission for repair in 1897, and did not go in commission again till May, 1898, only two months before she was lost.

Paul Simon, the Marine Superintendent, in testifying as to the inspection of the "Bourgogne," the certificate of which was put in evidence, says that such a certificate was made "before every *voyage*;" that the certificate was made for the 27th voyage; that the 27th voyage was the one on which she was when she was lost, and that that voyage began in Havre. And the certificate itself shows this.

And Simon continually used the word "voyage" so as to show that he meant not a crossing, but the voyage from Havre to New York and back to Havre.

Other testimony is to the same effect.

Capt. Poirot testified that at the end of each voyage he returned to the office of the Petitioner one deck log, adding: "There is only one for each voyage."

If each crossing was considered as a voyage he would necessarily have returned to the office of the company two logs, one for the outward and one for the homeward crossing. That he only returned one log shows that the "voyage" for which the log was kept was from Havre to New York and back to Havre.

Capt. Poirot had commanded her (the "Bourgogne") for one voyage only. And he testified that the vessels keep a separate log for each separate voyage.

"Q. Meaning by a voyage from Havre to New York and back?

A. The log book covers the round trip from Havre to New York and back to Havre. *Those two trips complete one voyage* and each voyage has a separate log book."

Simon testified the crew are shipped for each voyage—are free at the end of the voyage.

The situation then is this:

The Petitioner ran its vessels under a contract whereby it agreed to make 52 *voyages* between Havre and New York (going and returning), each *voyage* of 6,260 sea miles, having two crossings of 3,130 sea miles each.

It kept the accounts of each such *voyage* separate from the accounts of any other such *voyage*. It inspected the steamer and had made a certificate of inspection for each *voyage* at Havre and the certificate of the inspection made at Havre for this *voyage* stated the *voyage* was No. 27.

It shipped its crews at Havre for each *voyage* at the beginning of the voyage.

Its captains kept one log for each *voyage* from Havre to New York and back to Havre.

Its captains, its officers and its sailors spoke of going from Havre to New York and back as a voyage. They never spoke of a crossing as a voyage.

The number given by the Petitioner as the number of the voyage was not the number of this crossing, because if each crossing was numbered, the numbers of the crossings from New York to Havre must be even numbers, while 27 is an odd number.

The Petitioner admitted that each voyage from Havre to New York and back to Havre was "*treated as and called*" a voyage and the accounts of it were kept separate.

There is not a particle of evidence in the case to contradict the above.

a. The opinion of the Circuit Court of Appeals says that "the word 'voyage,' like so many other words, is somewhat elastic. The meaning to be given to it in any particular case is largely dependent upon the facts of that case."

> In this case there is no dispute, discrepancy or inconsistency *in the facts*. All the facts give one and the same meaning to the word.

b. The opinion having quoted from the case of the Main (152 U. S., 122) the words "the real object of the Act was to limit the liability of vessel owners to *their* interest in *the adventure?*" adds "that is, to the adventure *in which the persons or property transported was put at risk.*"

And says, "the fundamental question seems to be this, considering the merchandise and passengers which are shipped as a whole, when does a ship reach a port where such merchandise and passengers are no longer any part of them exposed to the risks of transport by that ship."

Of course "the merchandise and passengers," which are to be considered "as a whole," must be *all* merchandise and passengers received on board the ship during any part of "the voyage" from its beginning to its ending. Therefore, this throws no light on the question, "What is the voyage?"

Now we submit that the Court was in error in considering the risk to merchandise and passengers as the controlling element. When the statute speaks of "the value of the vessel and her freight for the voyage," it is not in any manner referring to any risk to which any *merchandise or passengers* are exposed, but to risks to which the *owner* of the vessel has been exposed, from which he is endeavoring to free himself by turning over to a trustee his interest in the vessel and the freight "for the voyage."

c. Again, the Court says: "When cargo and passengers are safely landed in New York all their risks of the crossing are over, the adventure *as to them*, and for which they paid freight and passage money, is fully terminated."

But the question is not at all when "the adventure" is terminated *as to the cargo and passengers.* The question is, "When does the adventure begin, and when is the adventure terminated as *to the owner of the ship.*" And that question is not at all affected by the termination of the adventure as to any passenger or any piece of cargo.

Where any liability has arisen against the owner of a ship during a voyage, that owner, if he desires to limit that liability, must pay over *all* the freight and passage money which have been earnings of that voyage, or of *any part* of it. Whether the risks run by any cargo or passenger, whose freight or passage money became part of such earnings, have or have not terminated, has nothing to do with the question as to what is the voyage, or what must the owner turn over. The owner's risk for his liability has not terminated till the termination of the voyage *as to him.* The question is this, "When did the voyage, the adventure, begin, *as to the owner,* and when did it end, *as to the owner?*"

d. The Court says, "it seems unreasonable to hold that the money thus paid by them (i. e., by cargo and passengers as to which the adventure and the risk has terminated) should be made applicable as a fund for the relief of other cargo and other passengers." If that were the principle of that Statute each piece of cargo injured or passenger injured could only call upon the owner to pay to the trustee the freight or passage money earned from the cargo or passenger *injured.* But the principle of the Statute is the contrary. The owner is required to pay over all freight and passage money received by him as earnings of the voyage, as well freight and passage money received by him for cargo and passengers *as to whom the risk has terminated* as that received by him from those as to whom the risk *has not terminated.*

Whatever freight and passage money is received from cargo and passengers injured or uninjured, if any, during the whole voyage, *is appropriated* as a fund for the relief of what was injured. And there is nothing "unreasonable" in requiring that it should be so.

From the time the voyage commenced, the risk of the owner commenced for any liability whatsoever. And the owner can only limit his liability by paying over the earnings *of the whole voyage.*

e. The question, therefore, still remains, What was the voyage—the adventure in this case? When did it begin, and when did it end?

The reason, given by the Court for its deciding that the passage from Havre to New York was not a part of the voyage, has no connection with the proper answer to this question. The ending of a risk to a passenger or to cargo on *a part* of the voyage has nothing to do with the duty of the owner to pay over the earnings of *the whole voyage*, and that ending does not show that the freight and passage money paid for that part was not a part of the *whole* earnings of the *whole* voyage.

f. Now in this case the owner of the Bourgogne was under contract to make "a voyage" from Havre to New York and back to Havre. That was not only its contract, but all the business of the owner was conducted on that basis. It employed its crew for a voyage from Havre to New York and back to Havre. Its ship was inspected for a voyage from Havre to New York and back to Havre. It directed the log of the ship to be but one from Havre to New York and back to Havre. The Master of the ship made one report of each voyage from Havre to New York and back to Havre. The owner gave one number to each voyage from Havre to New York and back to Havre.

It kept the accounts of each voyage from Havre to New York and back to Havre separate from the accounts of each other such voyage.

It never in any particular treated the trip from Havre to New York as a separate voyage from the trip from New York to Havre. It always declared that those two trips constituted one voyage, and always treated them as one voyage.

Every fact in the case, upon which facts, as the Court has said, the meaning of the word "voyage" depends, gave to the word the meaning "from Havre to New York and back to Havre," and that meaning only.

This Court by its decision has disregarded these facts and has cut this voyage in two and decided that each half was a whole. We urge that it was bound to accept the contract, the statements and the action of the owner there being no disagreement or inconsistency as to these facts, and that the question, What is "the voyage," which Congress intends in the Act, has no reference to the ending of the risk of any part of the cargo or any passenger, but to the ending of the liability of the owner for anything that occurs during the "voyage" on which he sent the ship. And this owner sent this ship from Havre on a voyage from Havre to New York and back to Havre. That, therefore, was the voyage in question, and the limitation of the liability could only be arrived at by adding together all the earnings of every part of that voyage.

If a ship owner should charter his ship for a voyage from New York to Havana, touching at Charleston, Savannah and Key West, could it be held that because he had delivered cargo at Charleston or Savannah, the freight on such cargo was not included in "the earnings of the voyage?" It seems to us impossible. But unless that is the correct view, the Circuit Court of Appeals was in error in holding that the freight on cargo received on the "Bourgogne" in Havre and delivered in New York was not included in the earnings of this voyage.

This error should be corrected, not for this case only, but for all future cases.

FOURTH QUESTION.

Is a ship owner petitioning for a limitation of his liability entitled to keep part of the "earnings of the voyage" and still obtain such limitation, because he has not enabled the Court to ascertain exactly the amount of such part?

The facts on which this question arises are without dispute.

The Petitioner had agreed with the French Government that its steamers should make 52 voyages a year from Havre to New York and back to Havre, carrying the mails, for which service the Government had agreed to pay. The voyage on which the "Bourgogne" was lost was one of those voyages, and the Petitioner received from the Government under that contract *for the year in question* 5,473,400 francs, one fifty-second part of which is 105,257 francs.

The Circuit Court of Appeals in its opinion on this point says: "In one sense it may be said that by making each double crossing the steamer making it earned a part of the whole sum."

The Court does not suggest and we do not see any ground on which *anything else* could be said.

When the steamers, by making fifty-two voyages, earned for their owner a round sum, nothing else can be said except that each steamer, by making one voyage, earned a fifty-second part of such round sum.

The Court's opinion proceeds, "What part it so earned we cannot say;" and again, "It seems impossible to say what fraction of the 5,480,000 francs is to be considered the compensation to any single steamer for undertaking to carry the mails on a single trip from New York to Havre," and therefore it held that the Petitioner might keep the whole.

Now it is perfectly obvious that if there were any fact which was ground for claiming that such compensation was anything less than the proportionate part of the whole sum, the burden was upon the Petitioner to prove such fact and show the Court just why and how that proportionate share should be diminished. In the absence of any such fact (and there was none) the Court could ascertain the share of such compensation by the simple use of the rule of simple division.

As it is the situation is this: The Statute allows a limitation of liability to the value of vessel and freight, the freight being the earnings of the vessel for the voyage.

Of course the Petitioner must prove what is the value to which his liability is to be limited, and whatever that value is he must surrender it.

But the Circuit Court of Appeals has held that if there is a part of such value, of the exact amount of which the Petitioner has not furnished evidence to the Court, he is to be allowed to *keep the whole* of that part of such value to himself and still be granted a limitation of his liability to the amount of the value *less such part.*

This is a great injustice to these claimants and by no means in conformity with the view expressed by this Court in the case of The Main (152 U. S., 111): "As the object of the Statute was to curtail the amount that would otherwise be recoverable, it should not be construed to abridge the rights of the injured party to a greater extent than its language will fairly warrant."

Any portion of that payment to the Petitioner by the French Government by reason of this voyage of the "Bourgoyne" must fairly be included in what this Court in the case of O'Brien *vs.* Miller (168 U. S., 304) speaks of as "all gains arising during the voyage."

Inasmuch as the Petitioner has furnished to the Court no evidence whatever that the proportionate share of the whole sum recived for the 52 voyages was not included in "all gains arising during the voyage," the Court should have included such proportionate share in its fixing the amount of limitation and ordered the payment of that amount to the Trustee as a part of the fund "about which the concourse of the claimants is to be had" (105 U. S., p. 452).

Anything less than that is injustice to these claimants. And this Court should call the case before it, that it may remedy that injustice.

FIFTH QUESTION.

Is a ship owner, seeking a limitation of his liability, who has alleged in his petition that the disaster has occurred "without his privity and knowledge," required to establish that fact by proof in order to obtain a decree granting him his limitation.

The Petition in this case alleged that "the loss, damage and injury caused by the collision were without the privity or knowledge of the Petitioner." The answers by a specific denial put that allegation in issue.

The Circuit Court of Appeals in the First Circuit, in the case of Quinlan *vs.* Pew (56 Fed. Rep., p. 111, 118), said: "As the owners were obliged to allege, in order to maintain the privilege of limitation, that they were without privity or knowledge, and as this proposition is one peculiarly within their own cognizance, a certain burden rests upon them (1 Greenl. on Ev., 78-80, and 3 do., 404).

And the District Judge, in trying this cause, said: "I rule that the burden of proof is upon the Petitioner to show by some evidence the allegation in his petition that the loss has occurred without his privity or knowledge."

No case has held any other doctrine, but the decision of the Circuit Court of Appeals has disregarded this rule.

a. In the case of the Republic (61 F. R., 109) this same Circuit Court of Appeals, in just such a case, said: "When the ship owner is a corporation the privity or knowledge which precludes the statutory right must be that of the managing officers."

It follows that in order to establish the lack of privity or knowledge alleged proof must be furnished that the *managing officers* of this Petitioner had no such privity or knowledge.

But the Petitioner in this case did not call one of its managing officers, did not give a scintilla of evidence to show an absence of privity or knowledge on their part.

b. The progress of the cause showed that the privity or knowledge of the Petitioner rested upon the following facts:

1. The collision in this case was caused by the running of the "Bourgogne" at an immoderate and unlawful speed in a fog.

2. It had long been the practice of the steamers of the Petitioner to run at immoderate and unlawful speed in fog.

3. Such practice was known to the Petitioner.

4. Such practice had existed so long that the Petitioner was legally chargeable with notice of it.

5. The Petitioner continually had in its possession the means of learning that such practice existed.

6. The Petitioner had taken no means whatever to stop such unlawful practice.

c. It is clear that to justify the finding of the Circuit Court of Appeals, awarding to the Petitioner the limitation prayed for, it was necessary for it to hold that the Petitioner had proved that one or more of those propositions was not sustained.

But as to the first, the Court has held that the "Bourgogne" was in fault for running at such immoderate speed in a fog.

As to the second, it is matter of common knowledge. Everybody knows that this is the fact as to the Atlantic liners. The opinion of the Circuit Court of Appeals clothes it under the words, "a widespread impression." But that is what common knowledge is. And inasmuch as it is common knowledge that the Atlantic liners *cannot* make the passages which they do make *except* by running at excessive speed in fog, no exception can be made of the Petitioner's Atlantic liners without proof. But here there was no such proof.

As to the third fact, the proof was that in three cases the Petitioner had been condemned by the Courts to pay damages by reason of such running of one of its steamers at excessive speed in fog. And in a fourth case the same fact as to another steamer was found, although for a special reason existing in that case the Petitioner had not been condemned to pay damages caused thereby.

And aside from those special notices to the Petitioner, it had the same knowledge of this practice that everybody else had. And, moreover, it was necessary that it should have that knowledge, because it could not conduct its business without knowing how its steamers were run.

As to the fourth fact, the cases which hold that such is the law are clear and unopposed.

In *Carpenter* v. *Boston, &c., R. R.* (97 N. Y., 949), a passenger standing at a railroad station was injured by a mailbag thrown off the train by a mail agent. The Court of Appeals said that as it appeared that this had been often done before, the company was *chargeable with notice* that it was likely to be done again, and hence was chargeable with a duty to the passenger to stop the practice.

An exactly similar case was *Snow* v. *Fitchburg R. R.* (136 Mass., 552), and the Massachusetts Court laid down the law in the same way, both as to notice to the company and its duty to stop the practice.

Another similar case was *Galloway* v. *Chic., &c., R. R.* (56 Minn., 346), and the Court said that the practice of throwing mailbags on the platform before the train stopped had been so frequent and long continued as to charge the defendant with notice of it, and that the defendant had never made an attempt to stop it, and that on these facts, as the practice was a dangerous one, "the defendant was guilty of negligence, which was the proximate cause of the defendant's injuries."

And the same rule was laid down in Michigan in the case of *Shaw* v. *The Chic. R. R.* (49 Lawyers' Rep. Annotated, p. 308), in which the Court said:

> "The railroad company is not primarily liable for the negligence of the mail agent, but it owes the duty of not permitting dangerous habits of the agent in delivering heavy packages from the car in such manner as to endanger persons lawfully on its premises to continue, and *evidence of such a practice continued for a considerable period is notice to the company.*"

So in the case of *Martin* v. *Webb* (110 U. S., pp. 7–14), the Supreme Court held that a course of conduct of a cashier of a bank may be presumed to have been carried on in conformity with instruction received from those who have the right to control its operations.

> "Directors of a Bank," says the Court, "cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business and to exercise reasonable control and supervision of its officers. They have something more to do than from time to time to elect the officers of a bank and to make declaration of dividends. That which they ought by proper diligence to have known as to the *general course of business in the bank, they may be presumed to have known.*"

And, if this is so as to the officers of a bank, how much more stringent is the duty upon directors and officers of an ocean navigation company, upon whose action depend not only the care of property, but the lives of their passengers, as to whose safety they are bound to the highest degree of care.

As to the fifth fact, it appeared without contradiction that the log books of each voyage, containing entries of the weather and of the distance run every two hours, and the captain's Rapport de Mer, containing entries giving similar information, were furnished to the officers of the Petitioner at the end of every voyage.

And the Petitioner, though ordered by the Court to produce on the trial such log books, did not produce one.

As to the sixth fact, there was not a particle of evidence that the Petitioner had ever done anything whatever to stop the practice. On the contrary, it was proved that the captains whose violations of law had caused the Petitioner to be held liable had

not been called on to make up any of the loss so caused, or been reproved therefor, and that the Petitioner, on the contrary, had advanced one of those captains to a higher office, and continually offered to all its captains a premium for speed without making exception for fog.

Those six facts, therefore, being absolutely established, the privity of the Petitioner with this disaster was therefore established. The Circuit Court of Appeals said: "Upon the proof as it stands we cannot find that the Petitioner's officers knowingly tolerated or encouraged the running of its steamers at excessive speed in fogs." But that was not the question. The question was, Had the Petitioner proved (the burden of proof being upon it) that its officers *had not* knowingly tolerated or encouraged such running? Unless it had, it had not proved that this disaster was "done, occasioned or incurred without the privity or knowledge of the owner." The decision of the Court was not only contrary to the rule that the Petitioner had the burden of proving that it had no such privity or knowledge, but was contrary to the undisputed evidence and the necessary legal conclusion which established that it had such privity.

SIXTH QUESTION.

Is a corporation chargeable in law with knowledge of an illegal practice of its officers or agents, continued by such officers and agents through a course of many years, and with permitting such illegal practice?

The cases just cited above are abundant to establish the proposition that such a corporation is so chargeable.

97 N. Y., 949.
136 Mass., 552.
50 Minn., 346.
49 Lawyers' Rep., Annotated, p. 308.
110 U. S., p. 7-14.

And not a case can be found, except the present, which rules otherwise.

SEVENTH QUESTION.

Is not the common knowledge that "the various Atlantic liners, which seek for and obtain the patronage of the traveling public by means of the quick passages they make, are able to make such passages *only* by running at excessive speed in a fog" (Opinion, fol.), sufficient ground for a holding by the Court that the petitioner's vessels, which are "Atlantic liners," are able to make their quick passages *only* by running at excessive speed in a fog, in the absence of any evidence from the Petitioner that its steamers are able to make their quick passages and do make them without running at such excessive speed in fog?

We maintain that the words "widespread impression," in the opinion of the Circuit Court of Appeals, are only a euphemism for "common knowledge." And that there is such common knowledge cannot be truthfully denied.

That being so, the logic is unanswerable.

The syllogism is simple:

Major Premise—The Atlantic liners which make the quick passages, by means of which they seek for and obtain the patronage of the traveling public, "are able to make such passages *only* by running at excessive speed in a fog."

Minor Premise—The steamers of the Petitioner are such "Atlantic liners."

Conclusion—Hence, the steamers of the Petitioner make their passages *only* by running at excessive speed in a fog.—Q. E. D.

EIGHTH QUESTION.

Was the holding of the Court that the disaster in the case was "done, occasioned or incurred without the privity or knowledge of the owners" justified, when the Petitioner had not given a particle of evidence to show that the practice of the captains of its steamers to run at immoderate and unlawful speed in fog was not known to it, or that it had sought to stop the practice, and when the evidence showed positively without contradiction that the means of knowledae of such practice was continually furnished to its administrative officers.

1. The two following facts are without dispute in this case:

(*a*) The Petitioner alleged in his petition that this disaster was done, occasioned and incurred without the privity or knowledge of the Petitioner.

(*b*) Notwithstanding the rule that the burden of proving that allegation was on the Petitioner, and that the privity and knowledge of a corporation is the privity and knowledge of the managing officers of the corporation, not one of the managing officers of this Petitioner was called as a witness.

2. In view of what the Court called "a widespread impression" (which we insist is "common knowledge") that the fast "Atlantic liners" can *only* make the quick passages by which they seek for and obtain the patronage of the traveling public "by running at excessive speed in fog," it follows, in the absence of proof to the contrary, that the same condition of things *must* apply to the "Atlantic liners" of the Petitioner. The District Judge in this case had spoken of it as "the almost universal practice of running ocean steamers at excessive speed in fog." The Circuit Court of Appeals in the case of "The Columbian" had spoken of it as "a custom" (100 F. R., 972), and the Supreme Court in the case of the "Umbria" (166 U. S., 409) had characterized it as "a custom which implies a flagrant disregard of the rights of other vessels." The claimants added to this positive proof as to the Atlantic liners of the Petitioner:

(*a*) They proved that three times such Atlantic liners had been found by the Courts to have run at excessive speed in fog and the company had been held liable therefor—"The Bretagne," "The Normandie" and "The Touraine."

(*b*) They proved that another of the Petitioner's liners ("The Champagne") had been found to have also so run, although the Court for another reason

arising in that case had not held the Petitioner liable for the damages.

The Circuit Court of Appeals fell into error as to this case. It speaks of this case as "subsequent to the last of the three cases above mentioned." But the case of "The Touraine" was in 1894, while the case of "The Champagne" was in 1887.

So the case of "The Bourgogne" and "The Ailsa" was a case of collision in the harbor of New York and "The Bourgogne" was just about to anchor.

We submit that the fact that in one case one of the Petitioner's vessels *in port* was held not to be going at excessive speed in fog does not at all lessen the "persuasiveness" of the fact that four of its vessels had been convicted of navigating in accordance with what the Court calls a "widespread impression."

(c) Furthermore, in addition, the claimants called witnesses, who testified to the actual practice by the Petitioner's liners of running in accordance with that "widespread impression."

Peeters had made about 88 voyages on the Petitioner's steamers.
Levannow, about 70 voyages.
Baruch, every year since 1895.
Riker, 12 to 15 voyages.
Steiner, 6 voyages.
Burras, 32 to 36 voyages.

And all of these witnesses testified that the practice agreed with the "widespread impression" which the Court concedes to exist.

Now we insist that this evidence, coupled with that "widespread impression," in the absence of evidence by any captain of any of the Petitioner's Atlantic liners that any of its vessels was run otherwise than in accordance with that "widespread im-

pression," *required* a finding that they were so run.

> Two of such captains were called by the Petitioner. One of them testified that it was not the general habit to "run *at full speed* in a fog," and the other said, "I slow down always in fog." And that is all. Neither of them testified at all as to "*moderate* speed" in fog. And manifestly, neither saying that the vessels do not run "*at full speed*," nor saying, "I slow down in fog," is the slightest evidence that the vessels are not run in accordance with that "widespread impression," or are run "at moderate speed."
>
> Three passengers were also called for Petitioner, but neither of them testified to "moderate speed."

It was, therefore, established to have been the practice of the Petitioner's "liners" to run at excessive speed in fog, without which they could not make the quick passages by means of which the Petitioner seeks for and obtains the patronage of the traveling public.

3. The Circuit Court of Appeals did not find in terms that such practice by the Petitioner's vessels of running at excessive speed did not exist.

It only said that it could not find that the Petitioner's officers knowingly tolerated or encouraged the running of its steamers at excessive speed in fogs.

But it is manifest that, in order to so hold, either such practice of running at excessive speed in fog did not exist, or it existed, but the Petitioner did not know of it, and, therefore did not "*knowingly* tolerate" it. For there was not a pretense that the Petitioner had ever done a thing or said a word to stop the practice.

4. It is difficult to say which would be the greatest error, a decision in face of the "widespread impression" and the evidence above cited, that it was

not the practice of the Petitioner's "liners" to run at excessive speed in fog, or a decision in face of the many decided cases quoted above (*ante*), that the Petitioner had no notice or knowledge of such practice.

Either decision is so erroneous that this Court ought not to allow it to stand.

We insist that it is matter of common knowledge that the Petitioner's "liners" have been and are in the practice of running at excessive speed in fog, and that it is not possible that the owner of those steamers has not known it—has been the only person that has not known of such practice.

The Petitioner could not transact the business without the fullest knowledge of such practice.

The well-known attitude of the owners of "Atlantic liners" towards this matter was well stated by the Court in the case of the "Columbian" (91 F. R., 802):

> "Had the steamer been an ocean liner instead of a freight steamer it would probably have been sent through the same fog at from 15 to 20 miles an hour, and its captain would have been *blamed by his company*, as well as by his passengers, if he had loitered at half speed. Though *this almost universal practice* may relieve the captain of a steamer from moral blame, the captain was none the less a transgressor of the International Rules."

NINTH QUESTION.

Did the Petitioner herein, in making and furnishing to the captains of its steamers the following rule,

"In conformity with the Articles of the International Regulations, having for object the prevention of collisions,

'All vessels under steam which approach each other so that there may be a risk of collision must diminish their speed or stop and go backwards if necessary. All vessels under steam must during foggy weather preserve a moderate speed.'

"The captain under these circumstances must diminish the speed of his engine, and in agreement with the Agent of Postes the captain must make known, by proces verbal, the delays which such manœuvres may have occasioned,"

fully perform the duty incumbent on it of "making and publishing to its employees sufficient and necessary rules to govern them in the performance of their duties, which would best secure the safety of its passengers?

The Circuit Court of Appeals has held that "no captain could be in doubt that the diminution he was required to make should be such as would conform his speed to the navigation which the International Rule prescribed." The Court does not deny that the only command of the Rule is to "*diminish*

the speed of his engine." How much is not ordered.

But the Court overlooked the fact, or gave no weight to it, that four of the Petitioner's captains had been found by the Courts to have either disobeyed the Company's Rule or to have considered that they obeyed the Rule by simply diminishing the speed of the engine *without* bringing the speed down to "the navigation which the International Rule prescribed."

And we submit that the fact that neither of those captains is shown to have been in any way criticised by the Petitioner, as having disobeyed the Rule (one of the four was advanced to one of the administration offices of the company), was proof that the company itself either knew that the Rule as it stood did not require any *such* lessening of speed as the Circuit Court of Appeals speaks of, or did not object to its violation.

The Petitioner, therefore, had notice of the insufficiency of the Rule as promulgated, and it became at once its duty to make a rule as to which there could be no misunderstanding by its captains.

Suppose the Petitioner had found fault with Captain Santelli of the "Touraine," charging him with violation of its Regulation as above stated.

If Santelli's answer had been, "I have not violated any regulation of the company. The rule says that I must diminish the speed of my engines. *I had diminished them*," the company could not have had any reply to him.

Or let us suppose that the Petitioner had undertaken to find fault with him as having violated the International Rule. Would not a complete answer have been that the company's regulation had instructed him that by simply lessening the speed of his engines he was acting "*in conformity* to the International Rule," and that if the company did not mean him to so understand, it must make some other regulation?

Moreover, the petitioner had been expressly informed by the decision of the French Courts against

it in the case of the "Touraine" and the "Sully" (fol. 3487) that merely diminishing the speed of the engine in fog "by some knots from the maximum" was not a compliance with the legal rule which requires a moderate speed in fog. It was its duty, therefore, to, have made a rule which would conform to the law as laid down for it.

It was practicable for the Petitioner to have made a rule reading as follows:

"Every vessel must in fog, mist or falling snow go at a moderate speed. A speed which only lessens the speed of the steamer one or two knots an hour in thick fog is not moderate. Moderate speed is such as will allow of a steamer's performing her duty of avoiding another vessel in a fog after the presence of such vessel is known. The log of each steamer will be examined at the close of each voyage and if it appears that the vessel has been run at an excessive speed in fog the captain will be fined and on a repetition of the offense will be discharged."

Can any one doubt that such a regulation would have been practicable and effective?

But everybody who knows about the business knows that such a Regulation would never be made, because the course of conduct required by it would be offensive to the company, and that a captain who followed that course would be discharged from its employ.

TENTH QUESTION.

The Petitioner having made and furnished to its Captains the Rule above set forth, and having thereafter been held liable by the Courts in three different cases, by reason of the fact that a captain of one of its steamers, notwithstanding that Rule, had run his vessel at an immoderate speed in fog, and the Petitioner not having even reproved either of those captains, or done anything whatever to better secure obedience from its captains to the requirement of the law, that the steamer should go at a moderate speed in fog, did the Petitioner perform the duty incumbent upon it to "exercise such a supervision over its servants and the prosecution of its business as to have reason to believe that it is being conducted in pursuance of such rules?"

There is no dispute as to the facts stated.

That a corporation is chargeable with such a duty is settled law.

> "A railroad company does not discharge its whole duty to the public by merely framing and publishing proper rules for the conduct of its business and the guidance of its servants, but *it is also required to exercise such a supervision over its servants and the prosecution of its business as to have reason to believe that it is being conducted in pursuance of such rules.*"
>
> *Whittaker* v. *D. & H. C. Co.*, 126 N. Y., 549; citing 107 U. S., 452; 55 N. Y., 579; 59 N. Y., 536.

And certainly, in face of the fact four times found by the Courts that the Petitioner's steamers were running in violation of law, it was bound to know that that practice existed. It could not believe that its steamers were run in accordance with its rule unless its rule was not in accordance with law.

ELEVENTH QUESTION.

How many times must a corporation be held liable in Court by reason of a violation of law on the part of one of its agents in order to charge it with the duty of putting a stop to further violation of such law by its servants?

We insist that this Petitioner, having been held liable for such violation three times, was charged with the duty of stopping such violation. We know of no reason why a fourth conviction or anything else should be required.

TWELFTH QUESTION.

Has an ocean steamer, leaving New York for Havre, with 714 persons on board and having life boats and rafts sufficient to carry only 658 persons, complied with Section 4488 of the U. S. Revised Statutes, which provides that she shall be provided with such numbers of life boats, floats, rafts, life preservers and drags as will best secure the safety of all persons on board such vessel in case of disaster?

(1) Section 4488 of the Revised Statutes of the United States (to which, by the first section of the Act of Aug. 7, 1882 [22 Stat. at L., 346] "all foreign private steam vessels carrying passengers from any port of the United States to any other place or country shall be subject," and to which, therefore, the "Bourgogne" was subject, provides that "Every steamer navigating the ocean * * * shall be provided with such numbers of life boats, floats, rafts, life preservers and drags as *will best secure the safety of all persons on board such vessel in case of disaster.*"

The "Bourgogne" had on board of her 714 persons, while her life boat and raft capacity would only provide for 658. These facts the District Judge found. We maintain that, by the above Statute, she was required to have a life boat and raft capacity sufficient to carry 714 persons. No less amount could "best secure the safety of all persons on board."

There were 56 persons on board the "Bourgogne" for whose safety in this disaster no provision had been made in the way of life boats and rafts.

The District Court held that because the steamboat inspector who gave the steamer a certificate in March previous to the disaster certified that she had all the life boats and rafts that were necessary under the law (although there was no proof that she had the same number of passengers in March as in July), and because one of the steamboat inspectors, Dumont, who did not appear to have any knowledge as to the "Bourgogne," testified that he thought that was all the boats she could carry without interfering with her management (although she was 500 feet long and the boats she carried occupied only 162 feet), the steamer had complied with that section of the statute.

And the Circuit Court of Appeals did not think it "necessary to add anything to his opinion" and sustained his decision.

We had not supposed it possible for any one to

think that a life-boat and raft capacity sufficient for only 658 persons would "best secure the safety of 714 persons in case of disaster."

We do not consider it a question to be argued. If the statement does not show that boat and raft capacity for 658 will not best secure the safety of 714, no argument whatever will show it.

THIRTEENTH QUESTION.

Is the question of what is required as the proper number of life boats and rafts for an ocean steamer on any voyage left to the discretion of the Board of Inspectors in such wise as to modify the requirement of that Section 4488 of the Revised Statutes?

The District Judge in his opinion said: "The Rules and Regulations of the Board of Inspectors leave the question of what is required in each case largely to the judgment and discretion of the Board."

This is a most extraordinary error. But the Circuit Court did not think it was "necessary to add anything to his opinion."

There is not a word in those Rules and Regulations which leaves anything to the judgment and discretion of the Inspectors as to what is required.

The Statute required that the "Bourgogne" should be provided with such numbers of life boats, floats, rafts, "as will best secure the safety of all persons on board her in case of disaster."

Rule 2d of the Inspectors provides how the carrying capacity of all life boats "shall be determined."

And Rule 3, Section 12th, provides that the "total capacity of lifeboats or of life boats and liferafts on steamers navigating the ocean shall *not be less* than the capacity given" under the table in that Rule.

There is no other rule of the Inspectors touching this question,

Under that Rule the "Bourgogne" was required to have *not less than* 5,670 cubic feet of boat capacity

She had something more than that, viz., 6,604 feet, but this was boat capacity to carry only 658 persons, while she had on board 714 persons.

The Statute (Sec. 4488) was the only thing that determines how much capacity she must have *for this voyage.*

FOURTEENTH QUESTION.

Had the Board of Steamboat Inspectors ever by any rule or decision undertaken to modify the requirement of that Section 4488 of the Revised Statutes, or to indicate in any way that the "Bourgogne" was not on this voyage required by Statute to have a sufficient lifeboat and raft capacity to secure the safety of 714 persons in this disaster?

There is nothing whatever in the Rules and Regulations of the Steamboat Inspectors which gives color to the thought that those Inspectors had ever thought of ever undertaking to modify Section 4888. Nor had they given any certificate whatever as to what was required as to lifeboat and raft capacity to the "Bourgogne" when she had 714 persons on board.

But the Circuit Court of Appeals has declined to add anything to the District Judge's decision on this point.

FIFTEENTH QUESTION.

Was the "Bourgogne" sailing from New York with 714 persons on board, but with a lifeboat and raft capacity for only 658, "properly equipped," in view of the requirement of Section 4488 of the Revised Statutes?

The question answers itself. A vessel is not properly equipped which has not complied with the requirements of the Statute as to equipment. And boats are included in equipment.

SIXTEENTH QUESTION.

Is an ocean steamer when in charge of a captain who is in the habit of violating the law as to the sailing of his vessel, and known to be such by her owner, and having on board 714 persons and a lifeboat and raft capacity for only 658, properly manned and equipped and supplied?

The Circuit Court of Appeals has held that the "Bourgogne," when in charge of such a master and so equipped as to boats, was properly manned, equipped and supplied.

As to the boats, we have nothing further to add.

As to the captain, we have this to say:

In order to have an ocean steamer or any vessel properly manned, she must be in charge of a competent master.

The Cygnet, 126 F. R., 745.
The Guildhall, 58 F. R., 800.
The Giles Loring, 48 F. R., 463.

Draper v. *The Conn. Ins. Co.*, 4 Duer, 234.

Kay on Shipmasters, Vol. 1, pp. 31 and 87.

Tait v. *Levy*, 13 East, 481.

In this latter case the master of a vessel, from ignorance, went into Barcelona instead of Tarragona. A loss occurred and the owners sought to recover insurance. The Court held that they could not recover because the captain did not have competent knowledge and skill, and the vessel was, therefore, not properly manned and seaworthy.

Now the "Bourgogne," when she sailed from New York, did not have a competent master, within the requirements of the law. It is not sufficient to establish *competency* in a master to prove that he has skill in navigation. In the case of *Coppins* v. *The New York Central R. R. Co.*, *122 N. Y., 564*, the N. Y. Court of Appeals has given a definition of what is meant by a competent man as follows:

> "A competent man is a reliable man, one who may be relied on to execute the rules of the owners, unless prevented by causes beyond his control. Hence, incompetency exists not alone in the physical or moral attributes, but in the disposition with which the servant performs his duties. *If he habitually neglects those duties he becomes unreliable*, although he may be physically and mentally able to do well all that is required of him. His *disposition towards his work*, toward the general safety of the work of his employer and of his fellow servants *makes him an incompetent.*"

Tried by this test, and no one can deny that it is a proper test, it is manifest that Captain Deloncle was not a competent man.

Kay on Shipmasters, *Vol. 1, p. 25*, says: "It is the duty of a master to obey the instructions of his owners, if they have given him any, and

where his instructions are silent to do nothing but what is consonant to the laws of the land."

See also *Wilson* v. *Rankin, 34 Law Journal, Q. B., 67.*

Whether in obedience to the instructions of the Petitioner (or if, as we claim, the instructions which it had given were not sufficient, then, in obedience to the law), it was the duty of every master of every ship of the Petitioner to navigate his vessel at a moderate speed in the fog. And the Court has found in this case that Captain Deloncle was not at that time navigating at moderate speed in a fog.

Now, it is proved in the case that Captatn Deloncle had been in the service of the company as captain of their steamers, among others the "Normandie," for years.

See evidence of West (fols. 2774-6).

Moreover, he had made the trip from New York to Havre in the nearest to the absolute time of all the captains.

And it is proved that on the previous trip of the "Bourgogne" Captain Deloncle had two days of fog. She left Sandy Hook at seven P. M. on Saturday and arrived at Havre at six A. M. Sunday morning. So she made the distance of 3,130 miles in 174 hours, an average of over 17 knots (her full speed) for the whole voyage.

Instead of having in command of the "Bourgogne" a master who could be "relied on to execute the rules" of the company, it had in command a master who, as it knew, could be relied on *not* to execute those rules (that is, if those rules required that his ship should go at moderate speed in a fog), and not to obey the law on that subject.

If, therefore, in order that the "Bourgogne" should be "properly manned," it was necessary that she should have a competent master—a reliable man who could be relied on to execute the rules of the company and to obey the law—it is manifest that she was not properly manned.

SEVENTEENTH QUESTION.

Has the owner of an ocean steamer, who sends her to sea with 714 persons on board, but with life-boat and raft capacity for only 658, and under the charge of a captain who has been the habit of violating the law in her navigation, and is known by the owner to be such, exercised due diligence to make his vessel seaworthy and properly manned, equipped and supplied under the Harter Act?

If, in order to have an ocean steamer carrying 714 passengers "properly equipped and supplied" it is necessary for her to have a life boat and raft capacity for 714 persons, and if in order to have her seaworthy and properly manned it is necessary that she should be in charge of a captain who is competent not only as to his knowledge of navigation, but as to his habit and disposition to obey the law and the orders of his owner as to such navigation, then manifestly the owner has not exercised due diligence if his vessel has not such boat capacity and has not such a captain in charge.

And this Court has held in many cases, the latest of which is The Wildcroft decided at the present term, that the burden of proof is upon the ship owner and that "it is only when he has discharged the burden which the law imposes upon him and shown that he has furnished a vessel fit and seaworthy, or has used due diligence to that end, that the law relieves him of the liability which he would otherwise incur."

This Petitioner utterly failed to discharge that burden.

It follows from the above considerations that the prayer of the petition should be granted and the certiorari prayed for should be issued.

The questions involved are of such immense importance to the navigation of ocean steamers and to the lives and safety of the enormous number of passengers on them, and to the clear declaration of the duties of the great corporations which carry on that business, that they ought to receive the consideration and determination of the Supreme Court. They are international in their character and effect, and nothing less than the determination of the highest Court of this country should or will be satisfactory to the immense interests involved.

The petition for the certiorari should therefore be granted.

R. D. BENEDICT,
Advocate for Deslions, *et al.*

Office Supreme Court U. S.
FILED
MAY 11 1906
JAMES H. MCKENNEY
Clerk

United States Supreme Court.

In the Matter
of
The Petition of
THE COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. La Bourgogne, for Limitation of Liability and other Relief.

33

No. ~~726~~ 29

Sir:

Please take notice that the petition for a certiorari, a copy of which is herewith served upon you, will be presented to the Supreme Court of the United States at the opening of Court on the 14th day of ~~April inst~~ May 1906., or as soon thereafter as counsel can be heard.

Dated, New York, April 30th, 1906.

Yours, etc.,

BENEDICT & BENEDICT,
Proctors for Deslions, et al.

A. GORDON MURRAY,
Proctor for Perry, et al.

To EDWARD K. JONES, Esq.,
Proctor for Petitioner.

United States Supreme Court.

In the Matter
of
The Petition of
THE COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. La Bourgogne, for Limitation of Liability and other Relief.

Now, before this Honorable Court, come George Deslions, W. C. Perry, Admr. of Kate M. Perry; W. C. Perry, Admr. of Florence Perry; W. C. Perry, Admr. of Sadie Perry; John Perry, father, and next of kin of certain infants; Pauline Henuy, Administratrix; Henry H. Knowles, Administrator; Louis Delfonti, Enrico Cirri, Arthur L. White, Executor, and Josephine M. Chanut, Executrix and the S. S. White Dental Co., claimants and appellants in the above entitled proceeding, and pray that this Court will issue its Writ of Certiorari in this proceeding to the United States Circuit Court of Appeals of the Second Circuit to bring before this Court the cause above named and the proceedings therein, to the end that this Court may review the same and make such decree therein as shall be lawful and just.

And in support of this Petition the parties above named present to this Court the following statement of the facts and of the considerations by reason of which their Petition for a certiorari is sustained and should be granted.

FACTS.

On July 4th, 1898, the steamer La Bourgogne, belonging to the Petitioner, which had left New York on July 2d, with a full cargo, with a crew of 223 and with 491 passengers, 714 persons in all, was sunk about 60 miles south of Sable Island by reason of a collision in a dense fog with the British sailing ship Cromartyshire. Of the crew 121 were saved. Of the passengers 43 were saved. A life boat and raft by which some of the parties were saved, were afterwards brought to New York.

Some fifty-three suits were brought against the owner of the steamer in various jurisdictions to recover damages arising to various parties from that disaster, which was alleged (and which has now been decided in this proceeding) to have been caused by fault of the Bourgogne, in that she was running at substantially full speed in a fog in violation of law.

On May 15th, 1900, the owner of the steamer filed its Petition in this cause in the District Court of the United States for the Southern District of New York, praying for a limitation of its liability.

The ground set up in the Petition for claiming jurisdiction of the cause to be in the District Court of the Southern District was that "one life boat and one life raft of the apparel or equipment of the said steamship, and of the value of about $100, were saved after the disaster and brought to the port of New York and are now within the jurisdiction of the Court," the petition having alleged that "the steamship and her cargo and pending freight became a total loss."

The Petition further alleged that the collision was not due to any fault on the part of the steamer and that the loss was incurred without the knowledge or privity of the Petitioner, but was caused solely by fault of the Cromartyshire. It set forth that the Petitioner "desires to contest its liability and the liability of the 'Bourgogne' to any extent whatever" and to that end "desires to surrender its interest in the said vessel and her pending freight, as provided by law" and it prayed for the appointment of a Trustee for that purpose.

Thereupon the Court on May 15th, 1900, made an order appointing Samuel H. Lyman as Trustee, according to the law in such case provided, ordering the Petitioner "to transfer its interest in the said steamship "La Bourgogne" *and her pending freight* for the voyage for the benefit of all claimants" to such Trustee.

On the same day the Petitioner, by its General Agent for the United States and Canada, Eugene de Bocande, executed a conveyance of the interest of the Petitioner "in the said steamship 'La Bourgogne' and in the freight of the said steamship for the voyage in which the said steamship was lost" to such Trustee.

The Petitioner delivered to the Trustee abovenamed the life boat and life raft referred to in the Petition, but did not deliver to him any portion of the freight of the steamship for the voyage.

The District Court on the same day ordered its monition to issue; appointed Thomas Alexander a Commissioner to receive proof of claims, and issued its injunction against the prosecution of all claims "until the hearing and determination of these proceedings."

Thereafter on August 21st, 1900, Commissioner Alexander filed his report that 58 claims had been presented to him as follows:

18 claims for loss of property and damages resulting from death.

31 claims for damages resulting from death.

7 claims for loss of property.

2 claims for loss of property and personal injuries.

Answers were filed to the Petition by these applicants for the Writ of Certiorari.

These answers denied all the allegations of the Petition as to the freedom of fault of the "Bourgogne," or the lack of knowledge or privity in the Petitioner and alleged that the "Bourgogne" was in fault, and that the Petitioner was itself in fault, and specified faults of the "Bourgogne" and of the Petitioner; they denied that the freight was lost and alleged that the Petitioner had received large amounts of freight money which it had not delivered to the Trustee as required by law.

It afterwards appeared by answers filed by the Petitioner to interrogatories attached to the answers, that the Petitioner had received—

For passage money on the trip of the Bourgogne from New York to Havre - - - - -	(fr.)	100,703.08
For passage money on the trip from Havre to New York - -		44,489.70
For freight on the trip from New York to Havre - - - - -		12,716.43
For freight on the trip from Havre to New York - - - - -		14,088.95
	(francs)	171,998.16

The answers to the Interrogatories also stated that the steamers of the line were run under a contract attached to such answers made by the Petitioner with the Government of France to make each year "fifty-two voyages from Havre to New York and return," and that for the year ending on July 22d, 1898, the Petitioner had received under that contract 5,473,400 francs as compensation for carrying the mails on these voyages and that this voyage of the Bourgogne was one of the fifty-two contracted for.

One fifty-second part of that sum is 105,257 francs.

This made the amount of money received by the Petitioner as proceeds of that voyage 277,257 francs=$55,451.

No part of these sums has ever been paid to the Trustee.

The cause was brought to trial in the District Court on October 9th, 1901, before Townsend, J., and on March 22d, 1902, he rendered his decision, that the Petitioner was liable by reason of the immoderate and unlawful speed of the Bourgogne in a dense fog, and was entitled to limit its liability to the value of the life boat and raft, and that the claims, except the death claims, be referred to a Commissioner to ascertain their amount, but that the claims arising out of death were not to be considered.

The several claims of the applicants for this certiorari were then submitted to the Commissioner who reported the various amounts of their various claims, rejecting, however, the claim of The S. S. White Dental Co., and on July 11th,

1904, the final decree of the District Court was entered accordingly.

From all parts of that decree, except that which held the Petitioner liable for the fault of the Bourgogne and which fixed the amounts of the several claims, these claimants appealed to the Circuit Court of Appeals on July 20th, 1904.

And on the 10th day of January, 1905, the Petitioner took an appeal from those parts of the decree which remained unappealed from.

In the Circuit Court of Appeals on the application of the Petitioner the questions involved in the two appeals were divided and ordered to be argued separately, and on the 20th day of April, 1905, the Circuit Court of Appeals heard argument on the question whether the navigation of the Bourgogne was faulty and whether the Petitioner was entitled to a limitation of liability and such incidental and dependent questions as might arise thereon.

On the 24th day of June, 1905, the Circuit Court of Appeals filed its opinion, affirming the decision of the District Court as to the fault of the Bourgogne and the liability of the Petitioner therefore, but reversing the decision that the Petitioner was entitled to limit its liability to the value of the life boat and raft, and holding that the Petitioner must pay to the Trustee the freight and passage money received in New York for the passage to Havre (viz. 113,419.57 francs) with interest from the time of the disaster, and reversing also the decision of the District Court that the claims for loss of life should be excluded from consideration.

Thereafter the remainiag questions involved were brought on for argument. These claimants had previously moved the Court to order the Petitioner to pay to the Trustee the amount which the Court had decided that it must pay, but the Court had denied that motion; and they now objected to any further proceeding in the case until the Court had been put in possession of the limited liability fund by the payment to the Trustee by the Petitioner of the amount which the Court had decided it must pay. But the Court overruled the objection, heard the argument and on the 21st of February, 1906, filed its opinion, sustaining the decree of the Court below as to all the remaining questions involved in the appeal of the Petitioner.

And on the 7th day of March, 1906, the Circuit Court of Appeals issued its mandate which has not been filed.

In that position of the case these Petitioners apply to this Court for a Writ of Certiorari to bring the cause before this Court for review.

QUESTIONS INVOLVED.

The questions involved which are sought to be brought before this Court by the Certiorari are as follows:

First. Is a ship owner who is a Petitioner for Limitation of Liability under the Statute, entitled to carry on his proceeding to obtain such limitation of liability, without having put the Court in possession of the limited-liability fund?

The Circuit Court of Appeals has held that he is so entitled and has allowed this Petitioner so to proceed.

Second. Is the requirement of the Statute and the Rules, that the owner—Petitioner must as a preliminary to his proceeding transfer to a Trustee appointed by the Court "his interest in the vessel and freight," complied with, by the execution and delivery to the Trustee of a paper transfer of such interest, without the actual delivery to such Trustee of the vessel and freight itself and the whole thereof?

The Circuit Court of Appeals has held that such previous actual delivery of the *res* and the whole thereof to the Trustee is not necessary.

Third. Is the question What is the "voyage," for which under the Statute the limitation is allowed and the freight for which "voyage" is to be included in fixing the limitation? to be determined in accordance with the contract made by the owner before the voyage under which his vessel was navigating at the time of the disaster and his course of business in accordance therewith, or is it to be determined by the Court on considerations outside of such contract and course of business?

The Circuit Court of Appeals has held that such contract and such course of business are not to be regarded in determining what was the voyage in question, and has without any evidence held that the

> "voyage" in question is this case was not the voyage which the owner had contracted to make, or in reference to which the owner's business before the disaster had been conducted.

Fourth. Is a ship owner, petitioning for a limitation of his liability, entitled to keep part of the earnings of the "voyage" and still obtain such limitation, because he has not enabled the Court to ascertain exactly the amount of such part?

> The Circuit Court of Appeals has held as to the Government's payment to the Petitioner for carrying the mails on this voyage that the Petitioner was not called upon to deliver to the Trustee any part of such payment because "it seems impossible to say what fraction of the 5,480,000 francs" (received by the Petitioner for 52 voyages) "is to be considered the compensation to any single steamer for undertaking to transport the mails on a single trip from New York to Havre."

Fifth Question. Is a ship owner, seeking a limitation of his liability, who has alleged in his petition that the disaster has occurred "without his privity and knowledge," required to establish that fact by proof in order to obtain a decree granting him his limitation?

> The Circuit Court of Appeals has held in substance that the burden was not upon the Petitioner to prove that the disaster was without the privity and knowledge of the Petitioner, but upon those opposing the petition to prove that it occurred with the privity and knowledge of the Petitioner.

Sixth Question. Is a corporation chargeable in law with knowledge of an illegal practice of its officers or agents, continued by such officers and agents through a course of many years, and with permitting such illegal practice?

> The Circuit Court of Appeals held that this Petitioner was not chargeable with notice of the illegal practice of its Masters to run its vessels at immoderate speed in fog, although three times it had been held liable in damages by the Courts because of such illegal running of its vessels, and although witnesses who had crossed many times on its vessels testified to such illegal running on many other occasions, and although no officer of the Petitioner testified as to lack of knowledge of such practice and no Master of any of its steamers testified against the existence of such practice.

Seventh Question. Is not the common knowledge that "the various Atlantic liners, which seek for and obtain the patronage of the traveling public by means of the quick passages they make, are able to make such passages only by running at excessive speed in a fog" (Opinion fol.) sufficient ground for a holding by the Court that the Petitioner's vessels, which are "Atlantic liners," are able to make their quick passages only by running at excessive speed in a fog, in the absence of any evidence from the Petitioner that its steamers are able to make their quick passages and do make them without running at such excessive speed in fog?

> The Circuit Court of Appeals has held that such common knowledge was not sufficient ground for such a holding, even though there were such absence of evidence.

Eighth Question. Was the holding of the Court that the disaster in the case was "done occasioned or incurred without the privity or knowledge of the owners" justified, when the Petitioner had not given a particle of evidence to show that the practice of the Captains of its steamers to run at immoderate and unlawful speed in fog was not known to it, or that it had sought to stop the practice, and when the evidence showed positively and without contradiction that the means of knowledge of such practice was continually furnished to its administrative officers?

> The Court made that holding, disregarding the rule that the Petitioner having alleged such lack of privity and knowledge was required to prove it, and disregarding the fact that not a particle of evidence that there was any such lack of knowledge on the part of the Petitioner was furnished, and disregarding the settled rule of law that such an illegal practice long continued charges the owner with knowledge of such practice and with the duty of stopping it.

Ninth Question. Did the Petitioner herein, in making and furnishing to the Captains of its steamers the following rule:

"In conformity with the Articles of the International Regulations, having for object the prevention of collisions,

'All vessels under steam which approach each other so that there may be a risk of collision, must diminish their speed or stop and go backwards if necessary. All vessels under steam must during foggy weather preserve a moderate speed.'

The captain, under these circumstances must diminish the speed of his engine, and in agreement with the Agent of Postes, the captain must make known, by proces verbal the delays which such manoeuvers may have occasioned."

fully perform the duty incumbent on it of "making and publishing to its employees sufficient and necessary rules to govern them in the performance of their duties which would best secure the safety of its passengers?

The Circuit Court of Appeals has held that it did.

Tenth Question. The Petitioner having made and furnished to its Captains the Rule above set forth and having thereafter been held liable by the Courts in three different cases, by reason of the fact that a Captain of one of its steamers notwithstanding that Rule had run his vessel at an immoderate speed in fog, and the Petitioner not having even reproved either of those Captains, or done anything whatever to better secure obedience from its Captains to the requirement of the law, that the steamer should go at a moderate speed in fog, did the Petitioner perform the duty incumbent upon it to "exercise such a supervision over its servants and the prosecution of its business as to have reason to believe that it is being conducted in pursuance of such rules?

The Circuit Court of Appeals has held that there was no lack of duty on the part of the Petitioner in this regard.

Eleventh Question. How many times must a Corporation be held liable in Court by reason of a violation of law on the part of one of its agents, in order to charge it with the duty of putting a stop to further violation of such law by its servants?

> The Circuit Court of Appeals has held that its being so held liable three times is not sufficient to charge it with such duty.

Twelfth Question. Has an ocean steamer, leaving New York for Havre with 714 persons on board and having life boats and rafts sufficient to carry only 658 persons, complied with Section 4488 of the U. S. Revised Statutes which provides that she " shall be provided with such numbers of life boats, floats, rafts, life preservers and drags as will best secure the safety of all persons on board such vessel in case of disaster" ?

> The Court of Appeals has held that this Petitioner, which sent the Bourgogne to sea with 714 persons on board while having a boat and raft capacity for only 658, was not in fault therefor.

Thirteenth Question. Is the question of what is required as the proper number of life boats and rafts for an ocean steamer on any voyage left to the discretion of the Board of Inspectors, in such wise as to modify the requirement of that Section 4488 of the Revised Statutes?

> The District Judge in his opinion held that the matter of the number of boats and rafts was left largely "to the judgment and discretion" of the Board of Steamboat Inspectors.

And the Circuit Court of Appeals said it did not think it necessary to add anything "to that opinion on this branch of the case."

Fourteenth Question. Had the Board of Steamboat Inspectors ever by any Rule or decision undertaken to modify the requirement of that Section 4488 of the Revised Statutes, or to indicate in any way that the Bourgogne was not on this voyage required by Statute to have a sufficient life boat and raft capacity to secure the safety of 714 persons in this disaster?

The District Judge decided that by reason of the Rules of the Steamboat Inspectors this steamer was not required to have a life boat and raft capacity for more than 658 persons and the Circuit Court of Appeals has approved that decision.

Fifteenth Question. Was the Bourgogne sailing from New York with 714 persons on board, but with a life boat and raft capacity for only 658 "properly equipped" in view of the requirement of Section 4488 of the Revised Statutes?

The District Court and the Circuit Court of Appeals have both held that she was.

Sixteenth Question. Is an ocean steamer when in charge of a Captain who is in the habit of violating the law as to the sailing of his vessel, and known to be such by her owner, and having on board 714 persons and a life boat and raft capacity for only 658 properly manned, equipped and supplied?

The Circuit Court of Appeals has held that the Bourgogne was properly manned, equipped and supplied under such circumstances.

Seventeenth Question. Has the owner of an ocean steamer, who sends her to sea with 714 persons on board, but with life boat and raft capacity for only 658 and under the charge of a Captain who has been in the habit of violating the law in her navigation and is known by the owner to be such, exercised due diligence to make his vessel properly seaworthy and manned, equipped and supplied under the Harter Act?

The Circuit Court of Appeals has held that the owner of the Bourgogne exercised due diligence in reference to the Bourgogne, under the circumstances above stated.

Therefore, by reason of the importance of the questions involved not only to the parties to this suit, but to the whole traveling public, and by reason of the manifest errors committed by the Circuit Court of Appeals and the injustice to these Petitioners and Claimants caused by such errors and the action of the Circuit Court of Appeals in accordance with such errors, these Petitioners pray this Honorable Court to issue its Writ of Certiorari to the said Circuit Court of Appeals to bring the case before it for Review, and that this Court would review the said case and make such decree therein as shall be just.

ROBERT D. BENEDICT,
Proctor for Deslions.

A. GORDON MURRAY,
Proctor for Perry, et al.

ROBERT D. BENEDICT,
of Counsel.

George F. Ebert Law Printer, 22 Ann Street.

Office Supreme Court U. S.
FILED
MAY 18 1906
JAMES H. MCKENNEY,

United States Supreme Court,

OCTOBER TERM 1905.

In the Matter

of

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship La Bourgogne, for limitation of Liability.

Petition by certain claimants for Writ of Certiorari.

No. ~~751.~~ 293

33.

Statement.

The petitioner in the above-entitled proceeding appeared by counsel in open Court on the 14th instant, and applied to have the matter of this application for a writ of certiorari laid over until the opening of the October Term.

The grounds of this application were, briefly:

(1) That counsel for the Steamship Company desires to have an opportunity to have a full consul-

tation with his client in Paris before determining whether or not to oppose the present application.

(2) That the Steamship Company's counsel is persuaded, in the present state of the case, that the present application for a writ of certiorari may be defeated; but, inasmuch as a number of questions were decided against the Steamship Company in the Court below, it may be that, ultimately, a petition for a similar writ will be presented in behalf of the Steamship Company to review the questions determined adversely to it, in which event the whole case would be before the Court.

This memorandum is merely filed to remind the Court of the oral application made in behalf of the Steamship Company last Monday. Counsel for the Steamship Company, therefore, does not, at the present stage of the case, feel called upon either to discuss the present petition for a writ of certiorari, or the grounds upon which a similar writ may be hereafter applied for in behalf of the Steamship Company.

In other words, this is merely an application that the whole matter be laid over until the opening of the next October Term.

New York, May 15, 1906.

EDWARD K. JONES,
Counsel for La Compagnie
Générale Transatlantique.

Office Supreme Court, U. S.
FILED.
FEB 25 1907
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

In the Matter
of
The Counter Petition of La Compagnie Generale Transatlantique for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

No. 33.

ANSWER OF CERTAIN DAMAGE CLAIMANTS TO THE COUNTER PETITION OF LA COMPAGNIE GENERALE TRANSATLANTIQUE FOR A WRIT OF CERTIORARI, AND POINTS IN SUPPORT OF SUCH ANSWER.

ANSWER.

GEORGE DESLIONS and Others, who are certain persons who have claimed damages against La Compagnie Generale Transatlantique by reason of matters in the counter petition herein set forth, who have obtained a decree in the court below, yet have themselves applied to this Court for a writ of certiorari and review of said decree, and have been granted the same, hereby oppose the counter peti-

tion of La Compagnie Generale Transatlantique about to be filed for writ of certiorari, and by way of answer to the said counter petition, allege as follows:

Answering the Seventh Article of the Counter Petition.

They traverse the seventh article of the petition in so far as it alleges that by the decree of the District Court set forth in said seventh article the matters referred to were "*finally decided.*" And they allege that the decree was an interlocutory decree, and was not a final decree.

Answering the Eighteenth Article of the Counter Petition.

They allege that the fact that a proceeding in a District Court was reversed in part in the Circuit Court of Appeals is not a fact which by itself makes it worthy of the writ of this Court. They allege that there is no such difference of decision between the Circuit Court of Appeals for the Seventh Circuit in *Rundell v. La Compagnie*, &c., 100 Fed. Rep., 655, and the Circuit Court of Appeals for the Second Circuit in the case of La Bourgogne, 139 Fed. Rep., 433, as to require a review and final decision by this Court.

The Rundell case held that admiralty had not jurisdiction of a suit for loss of life on the high seas brought by a representative of the deceased. The case of La Bourgogne was a case where the owner whos ship had caused the loss of life had instituted a proceeding in limitation of its liability, and had stayed all outstanding actions and suits, and had brought them all into the proceeding. The proceeding under the statutes gave jurisdiction.

There is no such clash between these two decisions as requires the decision of this Court to determine the law.

Answering generally, they allege that

They find nothing whatever set forth in the petition of the petitioner of gravity and importance sufficient to bring the application within the well-recognized rule under which this Court will issue a writ of certiorari to review the decision of a Circuit Court of Appeals (*In re Woods, 143 U. S., 202*).

And answering affirmatively the Counter Petition, they allege that

There are three valid reasons why the counter petition for writ of certiorari should not be granted in this proceeding.

A. The application is made too late. The case is now, by reason of a writ of certiorari already granted to claimants, on the present calendar of this Court, numbered 292, and the Court begins this session at a number above 200. Claimant's petition for writ of certiorari was granted May 21, 1906. Their briefs are ready for the argument of the appeal. No reason is shown for the long delay of the petitioner in this application, and it should not be granted, if for no other reason than to discourage such laches in such counter application.

B. The petitioner has never paid into this Court or to the trustee appointed by the Court the "freight pending." On the contrary, it still retains the same, although ordered to pay it to the trustee.

C. The petitioner is disobedient to orders of the Court below in reference to the production of its logs. It was ordered to produce there, but has never done so, and has shown no reason for not doing so.

D. The points on which petitioner asks for certiorari are either trivial, or are questions of fact and hence not to be considered by this Court, or are

included in the points raised by the claimants on the petition for certiorari already before the Court, and hence are points which will be considered by this Court on the hearing of No. 292 on the present calendar.

Wherefore these claimants pray that the counter petition for writ of certiorari may be denied.

In the alternative,and if the above prayer is refused, then these claimants pray that the Court will not grant the writ of certiorari, except upon condition that the petitioner shall first pay to the trustee herein the "freight pending" specfied in the article of the answer marked B, and also pay one-half of the expenses of his appeal, now resting on these claimants.

And claimants writ ever pray, &c.

GEORGE DESLIONS & OTHERS,
by E. G. Benedict, their Proctors.

BENEDICT & BENEDICT,
Proctors for Claimants.

Supreme Court of the United States

In the Matter

of

The Counter Petition of La Compagnie Generale Transatlantique for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

POINTS IN SUPPORT OF CLAIMANT'S ANSWER.

The first three paragraphs of the foregoing answer require no argument. If their force does not appear on their face, argument will not help them

Article A of the answer likewise requires no argument.

B-1. The claimants, W. C. Perry et al., propounded to the petitioner the following interrogatory among others (Record, fol. 304):

> "Fourteenth. What was the amount of passage money collected by the company from the passengers who sailed from New York on La Bourgogne on or about July 2d, and from the passengers who sailed from Havre on La Bourgogne on or about June 18th, 1898? Has any of such passage money been refunded; if yea, what amounts, and to what persons?"

The petitioner answered as follows (Record, fol. 441):

> "Fourteenth Question: A. The amount of passage money collected for the trip, New York-Havre, was 100,703.08 francs. The amount of passage money collected for the trip from Havre to New York was 44,480.70 francs.
>
> B. Yes. We refunded to survivors who declined sailing again the amount of outward passage and railroad tickets, also return passage Havre to New York, and railroad tickets to heirs of lost passengers.
>
> C. 13,111.64 francs.
>
> D. Part of this sum was refunded to survivors, and part to heirs of the lost passengers, as above stated."

Therefore this money should have been transferred to the Trustee together with the lifeboat and liferaft. It was never so transferred, and the petitioner has held this "freight pending" for nine years, during the whole litigation, and *has it now.* The attention of the petitioner was called to the necessity for paying it to the Trustee under the Rules by the motion to compel its payment, made to the District Court (fols. 472-475), which motion was in substance renewed before the Circuit Court of Appeals (fols. 7125-7129). But the money was never paid in. The decision of the District Court that petitioner was not liable for such freight pending makes no difference. The Court must be "possessed of the fund" in a limitation of liability proceeding (Norwich Co. v. Wright, 13 Wall., 124; Ex Parte Slayton, 105 U. S., 452).

The petitioner is like a bankrupt asking discharge of his debts, but yet refusing to surrender his existing estate to his trustee.

B 2. The petitioner was *ordered* by the District Court to produce certain logs of its steamers (Record, fols. 508, 510). These logs it has never produced.

Captains of some of its vessels were subpœnaed and directed to produce their logs (Record, p. 170).

Not a log was produced, and the witnesses were instructed by counsel for petitioner not to answer questions as to the logs (Record, pp. 309–313), even after the Court had ruled (Record, p. 316) that they must answer (Record, pp. 354, 355, 356, 358, 360, 368, 372).

A petitioner so in contumacy should not be regarded with favor by this Court, and should have its petition denied because of such contumacy, even if the petitioner were otherwise entitled to consideration.

IN REPLY TO PETITIONER'S POINTS

we submit the following considerations:

PETITIONER'S FIRST POINT.—We admit that when a petitioner for limitation of liability *actually transfers* his interest in a vessel and her pending freight to a trustee all claims and proceedings against the owner cease.

But all claims do *not* cease when the owner simply hands the trustee a piece of paper on which it has written, "I transfer to you all my interest in this vessel and her pending freight," and himself *retains* the vessel or freight. That was what this petitioner did. It admitted in its answer to the Fourteenth Interrogatory, above stated, that it had received over 145,000 francs prepaid passage money (which is "freight pending;" see *The Main* v. *Williams*, *153 U. S.*, *122*). But it never delivered a penny of it to the Trustee.

By a similar rule the petitioner, if his vessel had not been sunk, might have made a paper transfer of its interest in La Bourgogne to the Trustee, but have continued to run her for its own benefit, which would be plainly absurd as a compliance with the limitation of liability statutes.

PETITIONER'S SECOND POINT.—An appeal from the District Court to the Circuit Court of Appeals can be taken from final decrees only (Act of March 3, 1894, Sec. 6). The decree of the District Court of March 22, 1902, was *interlocutory* (fols. 3778-3783).

Of the cases cited in the petitioner's brief on this point, *none are in admiralty*. Every one is an equity or a common law case, and the law is different in admiralty causes.

It is a full answer to this point that, if allowed, it would be subversive of all the admiralty practice of the country since the limitation of liability statute was passed.

The practice of the admiralty has always been settled in regard to interlocutory and final decrees.

A case is tried out and goes to a decree. The Court pronounces upon the liability of the parties and enters a decree thereon, referring it to a commissioner to ascertain and report the amount of the damages, after which another decree for an exact amount is entered.

The first decree disposes of all the main questions of the case, and the reference may be a mere matter of adding a column of figures, and yet the first decree is interlocutory, and not appealable, the second decree is final and appealable. Such has been the practice in the Southern and Eastern Districts of New York from the beginning. And suppose that a libellant proceeds against two vessels. The libel is by decree dismissed as to Ship A, is sustained as to Ship B, and a reference ordered. Ship A has no concern with the reference; the first decree settled all its rights. Yet no appeal can be taken in the cause until Ship B's reference is concluded.

Limitation of liability proceedings do not differ one iota from the above in the practice. A decree is entered, allowing or disallowing the prayer for limitation, and ordering a reference if there is a surrendered fund. And not until that reference is concluded is final decree entered, from which an appeal can be taken.

The practice is an everyday one, and nobody before this case ever thought of claiming that the first decree, which fixes the legal rights of the parties, but orders the exact ascertainment of the damages, was aught else than an interlocutory decree. Unfortunately, such facts in the trial of a cause do not appear in the law reports. But if this Court were to inspect the records heretofore brought up in limitation of liability proceedings, the Court would find in each case that such is the fact.

Furthermore, the District Court itself states that the decree of March 22, 1902, is interlocutory. It describes such decree as interlocutory in its final decree of July 11, 1904 (see fol. 3965), and the Judge endorsed on such final decree this memorandum: "This decree substantially follows the practice of both the Eastern and Southern Districts of New York as regards the question of an interlocutory judgment, and is in other respect deemed correct. E.B.T., U.S.J." (fol. 3975).

The definition of a final decree given in petitioner's own brief at the beginning of the Third Point shows that the decree of March 22, 1902, was not final. The definition is as follows:

> "A decree is final for the purposes of the appeal when it *terminates the litigation between the parties on the merits and leaves nothing to be done but to enforce by execution what has been determined.*"

Did the decree of March 22, 1902, terminate the litigation between the parties? Let the Court look at Vols. III and IV of the Record, and see for how long a time and how fiercely that litigation went on!

Could the decree of March 22, 1902, have been enforced by execution as it stood? Impossible, without further action of the court!

The first decree held that the liability of the petitioner was limited to one boat and one liferaft. Suppose that during the pendency of the reference another lifeboat and another liferaft had floated ashore; could not the Court in its decree of July

11, 1904, have altered the first decree to say that the liability should be limited to *two* boats and *two* liferafts? The proposition cannot be denied, and that fact shows that final decree, after which nothing can be changed by the District Court, was not entered by the decree of March 11.

This matter is in admiralty. Never before, so far as we know, has the claim ever been advanced in admiralty that a decree adjusting the rights of the parties, but ordering a reference to compute damages, was anything other than interlocutory.

In *McGourkey* v. *Toledo & Ohio Railway, 146 U. S., 536*, this Court says:

> "It is equally well settled that *a decree in admiralty determining the question of liability for a collision or other tort* (The Palmyra, 10 Wheat. 502; Chace v. Vasquez, 11 Wheat. 422; Mordecai v. Lindsay [The Mary Eddy], 19 How., 199) or in equity establishing the validity of a patent and referring the case to a master to compute and report the damages, *is interlocutory merely* (Barnard v. Gibson, 7 How., 650; Humison v. Stainthorp, 2 Wall., 1906). It may be said in general that if the Court make a decree fixing the rights and liabilities of the parties, and thereupon refer the case to a master *for a ministerial purpose only*, and no further proceedings in court are contemplated, the decree is final; but *if it refer the case to him as a subordinate Court and for a judicial purpose*, as to state an account between the parties, upon which a further decree is to be entered, the decree is not final (Craighead v. Wilson, 18 How., 197; Beebe v. Russell, 19 How., 283)."

The Court is invited to examine the record of the proceedings in the cause before the Commissioner (Record, Vols. III and IV), and itself see how plain is the fact that the Commissioner was sitting as "a subordinate Court and for a judicial purpose."

The above citation is decisive of the point that the decree of March 22, 1902, herein, was interlocutory and not final, and claimants could not have appealed from it.

But we may call attention to the further fact (stated in the petitioner's brief on p. 21) that Mr. A. Gordon Murray, one of the proctors for claimants, *did actually serve a notice of appeal from that decree of March 22, 1902.* His appeal was taken by way of further security only, and to save the point which the petitioner is now so elaborately urging. But it was sufficient for that purpose. A limitation of liability proceeding is one proceeding only, and an appeal by any one party would be sufficient to save all rights of appeal. It is never necessary that all the various parties interested against the fund shall appeal.

PETITIONER'S THIRD POINT.—The third point of the brief we do not care to answer except as above.

4. There is no fourth point in the brief.

PETITIONER'S FIFTH POINT.—The parallel drawn in the Fifth Point of petitioner's brief between Judge Townsend's interlocutory decree and Judge Thomas' final decree is not well stated. We submit both in parallel columns, and, incidentally, we urge that in admiralty causes it is everyday practice for the final decree to repeat the main holdings of the interlocutory decree; in fact, in the Southern District of New York it is the invariable practice.

JUDGE TOWNSENDS' DECREE.	JUDGE THOMAS' DECREE.
That La Bourgogne was in fault for the collision (3781).	That La Bourgogne was in fault for the collision, and her owner is liable for damages (3966).
That all claims are referred to a Commissioner (3781), but loss of life claims are excluded (3780).	That such damages are as follows: Pauline Henuy, $3,812; H. H. Knowles, Administrator, &c., $2,000, &c., &c., &c. (fols. 3967 *et seq.*)
	That the claim of the S. S. White Dental Co. be disallowed (fol. 3971).
That petitioner is entitled to limit its liability (3780) and has transferred its interest, and such interest consists of a lifeboat and liferaft (fol. 3782).	That petitioner is entitled to limit its liability to the amount of the value of the said steamer and her freight (3971) and passage money from Havre to New York or from New York to Havre, or subsidy money are not to be included (3972).
	That the costs be divided (3972):
	That on payment of certain costs certain claimants who have commenced proceedings shall be perpetually enjoined from continuing such proceedings (3974).
	That all other parties are permanently enjoined from taking any proceeding at law or otherwise for the purpose of enforcing claims for damages arising out of the collision of La Bourgogne.

We submit that a mere glance shows one decree to be interlocutory and the other final. Both decrees hold that the ship is liable for the collision; the interlocutory decree refers the claims for exact ascertainment; the final decree declares the liability of the petitioner for certain specific amounts. The interlocutory decree decides the right to limit; it is repeated in the final decree. The final decree disallows a certain claim. The final decree provides for costs. And, most noteworthy difference, *the final decree grants the prayer of the petitioner for perpetual injunction, as to which the interlocutory decree is entirely silent.*

This seems decisive of the point. The petition had prayed for an injunction restraining all actions, suits and legal proceedings of any kind (Record, fol. 95). Thereupon a temporary injunction issued, restraining all actions "until the hearing and *determination* of these proceedings" (Record, fol. 119). Thereafter the decree of March 22, 1902, was signed adjudging the petitioner's right to limit. But it contained no injunction, and any suitor might have begun an independent action forthwith, if that was the final decree. Then followed the final decree of July 11, 1904, making perpetual the temporary injunction granted at the beginning, to last "until the hearing and determination of these proceedings," which showed that that decree was the "determination of these proceedings," viz., was the *final decree.*

PETITIONER'S SIXTH POINT.—The sixth point of the brief we do not care to answer, except as above.

PETITIONER'S SEVENTH POINT.—The seventh point of the brief we do not care to answer, except as above.

PETITIONER'S EIGHTH POINT.—The eighth point of the brief we do not care to answer, except as above.

PETITIONER'S NINTH POINT.—The brief says that the question of the privity or knowledge of the petitioner is a *question of fact!* It is not. It is a pure question of law.

The petitioner is a corporation. Its privity to or knowledge of the negligence causing the collision would be the privity or knowledge of its managing officers.

The Republic, 61 Fed. Rep., 109.

The claimants sought, by proof of the conduct of the petitioner's business, the lack of proper rules and regulations, the fact that its vessels had been

three times condemned by judicial decree for immoderate speed in fogs, and the common knowledge of all the world of the fact that the steamers of the fast transatlantic liners invariably run at full speed in fogs, to charge the petitioner with *legal* knowledge of the fact that its vessels always run at speed in fogs, and *legal* privity in the unlawful speed which caused the accident.

There is no question of fact about this.

And, furthermore, the question of the privity of knowledge of the petitioner is elaborately argued among the points which will be presented to the Court on the claimants' appeal now on this Court's calendar as number 292.

PETITIONER'S TENTH TO EIGHTEENTH POINTS.—From the tenth to the eighteenth point of its brief, the petitioner argues with great learning and particularly the question as to whether a shipowner is liable for loss of life occasioned by a negligent collision on the high seas.

And its brief makes so much of this question that it might almost be imagined that this is the holding of the Circuit Court of Appeals which the petitioner dreads to see sustained, *because* it expects that the Supreme Court will hold that it is *not entitled* to limit its liability. For, if the petitioner's right to limit is sustained, it is of no consequence to the petitioner whether the death claims are sustained or not. If that right is sustained, there is in Court (or there will be some day, when petitioner obeys the orders of the Court) a definite fund from which all claimants must draw their damages. It would be a matter of no moment to the petitioner whether there were two claimants or a hundred, whether the death claims were included or excluded.

The learned brief for the petitioner quotes *The Harrisberg and The Alaska* correctly, using the language of this Court as follows (130 U. S., 209):

> "In the absence of an Act of Congress or of a statute of a State giving a right of action therefor, a suit in admiralty could not be maintained

> in the Courts of the United States to recover damages for the death of a human being on the high seas."

But the actions which are restrained by the present proceeding in limitation of liability are not suits in admiralty. And in this case *there is* "a statute of a state giving a right of action therefor," to wit, a statute of France, to which country La Bourgogne belonged, and under which statute a decision was rendered in France against this petitioner for the very accident now in question (Record, fol. 1231).

But the brief argues that there is no question of comity in this case; that a foreign statute has no application, *ex proprio vigore*, to suits brought in this country; that the French law would have no application anyway, because (forsooth) the French Court held that ten knots an hour in a dense fog was moderate speed, and that the law of the flag is an exploded doctrine, *though the brief cites this Court* as saying in *Wilson v. McNamee, 102 U. S., 572*, that "A vessel at sea is considered as a part of the territory to which it belongs when at home."

The learning of the brief on all this subject must go for naught, because it omits one point.

That point is that *the petitioner in this proceeding is a Frenchman*—not brought into American courts against its will to defend against claims of American citizens, but *itself seeking our courts* to ask the great favor of a discharge from liability from debts created in favor of American citizens by the negligence of its own French servants.

Thus the words of this Court in *The Apollon, 9 Wheat., 362* (quoted in petitioner's brief, by the way), exactly apply:

> "The laws of no nation can justly extend beyond its own territory, *except so far as regards its own citizens.*"

Again, the brief quotes the *Brantford City, 29 Fed. Rep., 273*, as follows:

> "Foreign law is not adopted by comity unless some good reason appear in the particular case why it should be preferred to the law of the forum. The most frequent and controlling reasons are the actual or presumed interest of the parties, or the evident justice of the case arising from its special circumstances. *On this ground the law of the ship's home is applied by comity to regulate the mutual relations of the ship, her owner, master and crew, as among themselves.*"
>
> (Brief, p. 42. The italics are the brief's italics.)

But, argues the brief, while the law of the ship's home is to be applied to regulate the mutual relations of the ship with her owner, master and crew, it is *not* to be applied to regulate the mutual relations of the ship *and her passengers*. We fail to perceive the distinction.

The sole question for consideration of this Court on this point is as follows:

Can it be held that the United States Courts have no jurisdiction to enforce against a citizen of France, over whom this Court *has* jurisdiction, a claim against him for a tort perpetrated on French territory, and for which the law of France gives a remedy?

PETITIONER'S EIGHTEENTH AND NINETEENTH POINTS.—The eighteenth and nineteenth points in petitioner's brief are precisely points on which claimants have already secured their writ of certiorari. The writ need not be granted to petitioner on this application by reason of these points, for it will have full opportunity to argue these very points in opposition to the brief which claimants will submit on the hearing of case number 292 on the calendar of this Court.

PETITIONER'S TWENTIETH POINT.—The two extra matters mentioned in the petitioner's twentieth

point are not worthy of attention, to say nothing of being worthy of evoking a writ of certiorari from this Court.

1. The first question is solely one of the amount of the damages awarded to one out of over fifty claimants. The Commissioner, the District Court and the Circuit Court of Appeals have all awarded him a certain sum. Surely this great Court is not going to take up a petty question such as that!

2. And the second question is solely as to the right of a carrier to limit its liability to one hundred dollars by stipulation in the passage ticket. The question has been gone over again and again in this Court, and there is no new phase of it presented here which should call for its renewed consideration in this proceeding.

TO RECAPITULATE.

The important questions arising in this proceeding have already been called up by the writ of certiorari granted to the claimants, May 21, 1906. The petitioner now seeks to confuse and becloud those questions by bringing in other questions of its own on counter petition for writ of certiorari.

The counter petition should not be granted. The application is made too late and is made by a petitioner who is not entitled to ask favors of the Court.

We have shown that the reasons on which the petitioner ask for writ of certiorari are not the reasons on which this Court grant such writ.

The point as to the transfer of petitioner's interest to a trustee (Petitioner's First Point) will be dealt with on the hearing of claimant's writ of certiorari.

The point that the interlocutory decree in the proceeding was a final decree (Petitioner's Second to Eighth Points) is already settled by decisions of

the Court and by the invariable practice of the admiralty courts of this country ever since there was any admiralty practice.

The question of the "privity or knowledge" of the petitioner (Petitioner's Ninth Point) will be dealt with on the hearing of claimant's writ of certiorari.

The question of the right of American courts to hold petitioner liable for loss of life at sea (Petitioner's Tenth to Eighteenth Points) cannot be disputed in this proceeding, for the reason that petitioner is a French citizen, its vessel a French vessel, its liability undeniable under French law, and itself a voluntary suitor in the American courts, submitting all its rights for their consideration and decision.

The question of the freight and passage money (Petitioner's Eighteenth and Nineteenth Points) will be dealt with on the hearing of claimant's writ of certiorari.

And petitioner's Twentieth Point is trivial.

For all of which reasons it becomes evident that this is no case to warrant the issuance of a writ of certiorari by this Court, and the prayer of the counter petition should be denied.

ROBERT D. BENEDICT,
EDWARD GRENVILLE BENEDICT,
Advocates for Claimants.

Joseph H. Choate
Of Counsel

Office Supreme Court, U. S.
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No. 33.

UNITED STATES SUPREME COURT.

In the Matter

of

The Petition of La Compagnie Generale Trans-Atlantique, owner of the Steamship La Bourgogne, for Limitation of Liability and Other Relief,
Appellant,

Louis Delfonti,
Enrico Cirri,
Appellees.

Brief in Behalf of Louis Delfonti and Enrico Cirri, Appellees.

The allowances to Cirri and Delfonti, survivors of the disaster, made by the Commissioner, sustained by the Court and affirmed upon appeal, for personal injuries and loss of personal effects, are abundantly sustained by the evidence which is uncontradicted and unimpeached. The personal injuries of a temporary and of a permanent character sustained by these claimants will doubtless appear to have been underestimated by the learned Commissioner.

The argument of the appellant against the allowance for personal injuries of $250, to each of

those survivors who escaped half-naked (Vol. 4, page 2020, folios 6041, 6043), and suffered the untold miseries of that shipwreck, as detailed in the evidence on the main issue, which is familiar to the Court, seems so preposterous as to require no detailed answer.

Delfonti, a stone-cutter (Vol. 4, page 2011, fol. 6014), who then earned $3 to $4.50 a day (Vol. 4, page 2014, fol. 6023), was unable to work for three months after the disaster (Vol. 4, page 2015, fol. 6026), and still suffered at the time of the hearing (Vol. 4, page 2011, fols. 6015-6), years afterwards, from an injury to his leg (Vol. 4, page 2011, fol. 6014), sustained when he was obliged to jump from one life-boat to another in the effort to save his life (Vol. 4, page 2010, fol. 6013). This injury was treated by a physician when Delfonti arrived at his home in Milford, Massachusetts (Vol. 4, p. 2011, fol. 6014). Although the wound healed, the joints still swell at night and the injury is, as appears from the symptoms detailed, of a progressive character (Vol. 4, page 2012, fol. 6017).

Cirri, an importer of Italian products (Vol. 4, page 2017, fol. 6034), was, prior to the disaster, in excellent health (Vol. 4, page 2021, fol. 6046); he escaped in his trousers only (Vol. 4, p. 2020, fols. 6041, 6043), jumped into one of the life-boats, but was obliged to jump out and swim to another (Vol. 4, p. 2020, fol. 6042). His foot was injured, and he was incapacitated for four months (Vol. 4, page 2021, fol. 6046). The injury made him lame for at least three and one-half months (Vol. 4, p. 2022, fol. 6048, and p. 2029, fols. 6068-9), and he still suffers from rheumatic pains in all the muscles of his body (Vol. 4, p. 2022, fol. 6049). He was treated by a physician in Boston (Vol. 4,

p. 2022, fol. 6047), and in Florence (Vol. 4, p. 2030, fols. 6071-2), and is still doctoring as the result of the injuries sustained in the disaster (Vol. 4, p. 2022, fol. 6047).

The appellant had ample opportunity to offer testimony to discredit or contradict the claimants, but signally failed to do so. The allowance for personal injuries would not be excessive if the pain and suffering attending the hardships of the shipwreck were alone considered.

The claimants proved with great particularity their loss of baggage, giving the items, values and in some instances, times and places where and persons from whom purchased (Vol. 4, p. 2012, fol. 6017; p. 2022, fols. 6049-6052; p. 2026, fols. 6060-6067). The allowances for personal effects are not only justified by the evidence, but no other findings were possible in view of the evidence.

It is respectfully submitted that the exceptions to the learned Commissioner's findings in regard to the claims of Delfonti and Cirri were properly overruled by the Court and affirmed upon appeal, and this appeal from the decree in these respects is unwarranted.

Respectfully submitted,

FERDINAND E. M. BULLOWA,
Proctor and Advocate for Delfonti
and Cirri, Appellees.

LA BOURGOGNE

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

LA BOURGOGNE.

In the Matter

of

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for Limitation of Liability and other relief,

Appellee,

GEORGE DESLIONS; SALLIE M. PERRY, appointed in place of William C. Perry, deceased, as administratrix of the estates of Kate M. Perry, Sadie Perry and Florence Perry, decedents; John Perry, father and next of kin of the infants Katherine and Albert Perry; Pauline Henuy as administratrix of Juliette Cicot, deceased; Henry Hyer Knowles as administrator of Gertrude Lalla Rookh Knowles, deceased; Louis Delfonte and Enrico Cirri; Arthur L. White as executor, and Josephine M. Chanut as executrix; and the S. S. White Dental Company,

Claimants-Appellants-Petitioners for certiorari.

No. 38.

ON CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE CLAIMANTS.

This cause comes before the court on a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, issued May 24, 1906, p. 2,295, to review certain questions that had been decided adversely to these claimants in the final decision of the Court of Appeals, entered March 5, 1906, p. 2,291, in pursuance of the opinion of the court, filed June 23rd, 1905, pp. 2,259-2,275; *La Bourgogne*, 139 Fed. Rep., 433; and a subsequent and supplemental opinion filed February 22nd, 1906. Pp. 2,279-2,289; *La Bourgogne*, 144 Fed. Rep., 781.

The decision affirmed in part and reversed in part the decision of Townsend, J., in the District Court for the Southern District of New York. Pp. 1,245-1,265; *La Bourgogne*, 117 Fed. Rep., 261.

The questions raised on the petition for certiorari are, in short, that the Courts below erred in matters of law:

First, in granting to La Compagnie Generale Transatlantique as owner of the steamship *La Bourgogne* a limitation of its liability for the losses occasioned by the sinking of the steamship, in the absence of affirmative proof that the losses occurred without the knowledge and privity of the owner.

Second, in granting such limitation of liability without requiring the limitation of liability fund to be put in actual possession of the Court.

Third, in not including as "freight pending" or "freight for the voyage" to be accounted for by the petitioner, certain earnings of the steamer for the voyage, consisting of the prepaid freight and passage money on the trip from Havre to New York and the payment the Company received from the French Government in respect of the mail service on the voyage on which the steamship was lost.

These questions are discussed respectively in paragraphs VI, fol. 7,094; VII, fol. 7,119; II, fol. 7,072; III, fol. 7,081, of the Opinion of the Court of Appeals.

The litigation grew out of the collision between the French steamship *La Bourgogne* and the British ship *Cromartyshire,* which occurred at about 5:10 a. m. of July 4, 1898, fols 532, 665, 546, 621, 623, 717, 812, in latitude 42 degrees, 50 minutes N., and longitude 59 degrees, 50 minutes W., fol. 571, about 60 miles South, 10 degrees E. of Sable Island, fols. 571, 677, 725, 857, 913, 1,230, during a dense fog. Fols. 711, 712, 815, 823, 1641, 1,780.

As a result of the collision, the *Bourgogne* sank within half or three-quarters of an hour, fols. 581, 600, 905, with a shocking loss of life. Of the total number of 714 persons on board, fol. 436, 165 were saved, fols. 567, 575, 578, 1233, and 549 perished. Of the 491 passengers on board, 44 were saved, fols. 436, 567, and 447 perished. It

does not appear that any first-class passengers or any children were saved, and only one woman, Victorie Lacasse, appears to have survived. Fol. 892. Of the 223 officers and crew of the steamer, 121 were saved, fols. 436, 567, and 102 perished. In other words more than one-half of the officers and crew were saved while only one-tenth of the passengers were saved.

The survivors were taken on board the *Cromartyshire* a few hours after the collision, and were subsequently transferred to the steamship *Grecian*, fol. 911, which towed the *Cromartyshire* into Halifax July 6, 1898. Fols. 1,233-4.

A graphic account of the disaster appears in a statement made to Judge Dillon by one of the survivors. *Claimants' Exhibit 1*, fols. 860, 886, 892.

These claimants thereafter instituted actions against La Compagnie Generale Transatlantique in the State courts of New York and elsewhere on claims for personal injuries, for loss of property, and for damages suffered by reason of the death of certain of the passengers in the collision. Similar actions were instituted against the owner of the *Bourgogne* in other jurisdictions.

On May 15, 1900, nearly two years after the disaster, La Compagnie Generale Transatlantique filed in the United States District Court for the Southern District of New York a petition for limitation of its liability and for other relief, alleging that the *Bourgogne*, her cargo and freight had been totally lost as a consequence of the collision, fols. 20-23, and claiming that the loss, dam-

age and injury caused by the collision occurred without the privity or knowledge of the petitioner* and without the fault or negligence of those in charge of the navigation of *La Bourgogne*. Fols. 26, 27. It averred that the amount or value of its interest as owner of the vessel and her pending freight "is and amounts to nothing" except the value of a life boat and life raft, which it offered to surrender, fols. 23-24; 91; 93. After setting forth the pendency of 53 actions and claims against it, exceeding $1,800,000., fols. 28-90, it prayed, in the usual form, for a monition, citing all persons having claims to appear in the proceeding; asked for an injunction restraining the prosecution of any and all actions against the petitioner other than in the present proceeding, and prayed that the court would adjudge that the petitioner was not liable for any demands or claims whatever in consequence of the collision, or, if such liability should be established, that the amount thereof be limited to the interest of the petitioner in the steamship and her pending freight. Fols. 93-96.

On this petition an order was entered, on the same day, directing that the petitioner transfer its interest in the steamship *La Bourgogne* and her pending freight for the voyage, for the benefit of all claimants, to Samuel H. Lyman, the clerk

*Throughout this brief the word petitioner is used to denote the French Company, which petitioned for limitation of its liability. The petitioners for certiorari, are referred to in this brief, and in the court below, as claimants.

of the court, who was appointed trustee for all persons who might be shown to be legally entitled thereto. Pp. 34, 35.

The petitioner, on the same day, by the hand of Eugene de Bocande, its general agent for the United States and Canada, made and delivered subsequently to the order of the court, an indenture of transfer in which it is stated that the petitioner "has conveyed, assigned, transferred, and delivered over, and by these presents doth convey, assign, transfer and deliver over, to the said Samuel H. Lyman, trustee as aforesaid, all and singular the interest of the said petitioner in the said steamship *La Bourgogne,* her engines, tackle, apparel and furniture, and in the freight of the said steamship for the voyage in which the said steamship was lost * * * to have and to hold the same unto the said Samuel H. Lyman, Esq., as such trustee as aforesaid, and to his successors and assigns, subject to the order, control and direction of the District Court of the United States for the Southern District of New York." Fols. 110, 111.

In fact the petitioner had not "delivered over" and it never has "delivered over" to the trustees the earnings of the voyage nor anything else of value save two life boats and two life rafts. Fols. 468-470; 7133.

Thereupon, on May 15th, the Court issued an injunction, in the usual form, restraining the prosecution of suits or claims against the peti-

tioner except in the limitation proceeding, and issued a monition citing all persons having claims against the petitioner to present them to the commissioner appointed to receive claims in that proceeding. Fols. 117-119; 122, 124.

These claimants thereafter presented their claims to the commissioner, pp. 78, 79, 81 and in due course they filed answers to the petition. *Deslions*, p. 82; *Perry* and *Henny*, p. 91.

The total amount of all the claims presented to the commissioner, and by him reported to the Court was $2,248,148.05. Pp. 77-81.

The litigation was carried on substantially on the issues raised by the answers of Deslions and Perry.

The answers denied the averments of the petition that the *Bourgogne*, prior to and at the time of the collision, was proceeding at moderate speed. *Petition*, fols. 20, 24; *Answers, Deslions*, fol. 246; *Perry*, fol. 275.

They denied that the collision and the loss and damage caused by it occurred without the fault of the *Bourgogne* and without the privity or knowledge of the *petitioner*. *Petition*, fols. 20, 24, 27; *Answers, Deslions*, fols. 246, 248, *Perry*, fols. 276, 277.

They denied that the amount or value of the petitioner's interest in the *Bourgogne* and her freight amounted to nothing beyond the value of one life boat and one life raft and averred that the petitioner had received certain passage and

freight moneys for the voyage and a subvention from the French government, which the petitioner was bound to account for and pay into court or to the trustee as a condition of its right to a limitation of liability. *Petition,* fol. 91; *Answers, Deslions,* fols. 249, 252, 254, *Perry,* fol. 278.

The answers further averred:

a, that at the time of the collision the *Bourgogne* was running in a dense fog at a high and immoderate rate of speed, in contravention of the International rules of navigation, fols. 250, 280, 281;

b, that the petitioner had knowledge that the steamer would be so navigated without any proper action ever having been taken by it to prevent such navigation in a manner forbidden by law, fol. 280;

c, that the petitioner had never made any proper regulations, nor given to the commanders of its vessels, or to the commander of the *Bourgogne* any directions such as would insure that the navigation of its steamers, including the *Bourgogne,* should be conducted in accordance with law and prudently under the circumstances in which she was being navigated, fols. 251, 280, 281;

d, that the petitioner had not properly equipped and outfitted the steamer, in that she was not provided when she sailed from New York with water-tight bulkheads, or with boats, or with boat-

disengaging apparatus, as was required by the laws of the United States for vessels carrying passengers, fols. 252, 282;

e, that the steamer, on sailing from New York, was not furnished with a sufficient number of boats, as was required by the laws of the United States, in respect of steamers carrying passen- fols. 251, 282, 283;

f, that she was not properly equipped or manned by competent master, officers, or crew, fols. 251, 282, 283; and

g, that the navigation of the steamer was negligent, in that she was not keeping a proper lookout, did not hear the signals given by the *Cromartyshire*, and did not stop and reverse in time to avoid collision, or do all in her power to do so, fol. 281;

h, that the petitioner did not comply with the provisions of the Revised Statutes and the rules of the Supreme Court with reference to limitation of liability proceedings, in that it had not taken proper steps to determine the amount or value of its interest in the *Bourgogne* and her freight for the voyage, and had not put the freight or any part thereof within the jurisdiction of the court in this proceeding, but, on the contrary had collected large amounts of freight and passage money, which it retained in its own possession and refused to put in the jurisdiction of the court,

alleging untruly that such freight had been wholly lost and amounted to nothing, fols. 252, 253,283, 284;

i, that the petitioner had further failed to comply with the statutes and rules, in that it had retained in its own possession, and had not delivered or offered to deliver into the jurisdiction of the court a large amount of money constituting a part of the subvention or subsidy received by it from the French government for carrying the mails or for other services on that voyage of the steamer, which the claimants contended was properly to be included as a part of the pending freight for the voyage. Fols. 254, 285.

The claimants appended to their respective answers certain interrogatories, which the petitioner was required to answer under oath or solemn affirmation. *Deslions*, pp. 87-91; *Answers to the interrogatories*, pp. 137-143; *Perry* and *Henny*, pp. 98-103; *Answers to the interrogatories* pp. 144-150.

The object of these interrogatories was to prove what rules and regulations had been promulgated by the company with regard to the navigation of its ships in fog; what instructions had been given with regard to the course, what number of passengers and crew the steamer carried and the size and capacity of the life boats and life rafts that had been provided for their security; what apparatus was supplied for lowering the boats; when the vessel had been surveyed; what were the terms of the agreement between the French government

and the petitioner under which a subvention or subsidy was paid for the voyage; what amount of freight and passage money had been collected, and the outcome of certain litigation between the petitioner and the owners of the *Cromartyshire* which was or had been pending in England with reference to the fault of the respective vessels for the collision.

The petitioner excepted to these interrogatories as vague, uncertain and insufficient, and further on the ground that the answers "would or might tend to expose the petitioner to a penalty or forfeiture." Pp. 124-129.

Brown, *J.*, overruled all the exceptions except those relating to the bulkheads, the boat-disengaging apparatus and the number of boats carried, which he permitted the petitioner to refuse to answer if it asserted and relied on its privilege, *Opinion*, pp. 129-133, and sustained the exception in regard to the litigation in England, fols. 269-270, 307, as well as those regarding the insurance that the Compagnie had received. Fol. 267.

In the course of his opinion, p. 129, Judge Brown, said, fol. 396:

"The object of most of the interrogatories to which objection is made, is to prove that the petitioner, or its responsible officers, or superintendents, were in privity with the alleged negligence in violation of law, and * * * connived at such violations and negligence, by which the loss and injury arose in consequence of which the petitioner is disabled from claiming the limita-

tion of liability sought in this proceeding. The purpose of the interrogatories is no doubt material and vital. If established it will defeat the petitioner. But the evidence to sustain this defense [of privity with the cause of damage, fol. 389] cannot be forced from the petitioner itself, as against its claim of privilege, so far as relates to the subject matters that are embraced in the penal statutes above referred to."

With reference to the interrogatories relating to the subvention received from the French government, Judge Brown said, fol. 392:

"It is also charged that the company had received from the French government a subvention or subsidy for carrying the mails and for other services on this voyage which the company has also retained and not submitted to the jurisdiction of the court. As the surrender of the vessel and the freight pending with all that is legally covered by those terms is a condition of the petitioner's relief, the above charges in the answer present a material issue, and the interrogatories referring to those latter points are allowed, though without now determining their legal effect when the facts are ascertained." Fols. 392, 393.

Orders were entered on the judge's decision on the exceptions to the interrogatories, November 2nd and 12th, 1900. Pp. 134, 135.

The petitioner was ordered to file its answers to the interrogatories verified by one of its officers, within 60 days. Fol. 407. On March 8, 1901, 116 days thereafter, no answers having been filed, an order was made that the interrogatories be taken

pro confesso. Fol. 452. On March 15th, 1901, on consent of the claimants, this order was set aside and the petitioner was allowed to file unverified answers, on the understanding that it would file verified answers within 30 days thereafter. Fols. 456, 457. Unverified answers to the interrogatories were accordingly filed on March 15th and 18th, 1901, Deslions, fols. 409-429, Perry, fols. 430-449, and on April 16th a verification of these answers by the president of the petitioner was filed. Fols. 459-462.

It appears from those answers, fols. 415, 416, 433, 434, that there was in force in 1898 and in the hands of the captains, a volume known as the "Reglements du Service a Bord," Article 395 of which is given in the answers with the punctuation as follows:

In conformity with the rules of international regulations, having for object the prevention of collisions—

"All vessels under steam which approach each other so that there may be risk of collision, must diminish their speed, or stop and go backwards if necessary. All vessels under steam must, during foggy weather, preserve a moderate speed."

The Captain under these circumstances must diminish the speed of his engines and, in agreement with the Agent of Posts, the Captain must make known by proces verbal the delays which such manœuvres may have occasioned. Fol. 416.

The same regulation is given in the answers to the Perry interrogatories as article No. 394, but this is undoubtedly a typographical error as the rule as given reads the same. Fol. 433.

In the examination of Captain Emanuel Fajolle, January 25, 1900, in which he was subpoenaed to bring a copy of the book containing this regulation, fol. 1045 *et seq.*, he identified the rule. Fols. 1050, 1051. Captain Santelli, fol. 930, and Captain Poirot, fol. 2910 were also examined with regard to it. Captain Fajolle, fol. 1045, said that his copy of the "Reglements du Service a Bord" had been returned for revision "as they are very old." There is no proof that a letter issued in 1884, fols. 2886, 2909, and referred to in the opinion of Judge Townsend, fols. 3761-3763, was in force at the time of the collision, or that it had ever been communicated to the captain of the *Bourgogne*. No orders of a similar kind had been issued since 1884. Fols. 3071, 3072. Another captain who had been in petitioner's service eight years had never seen it. Fols. 2905, 2909. *See post*, p. 62.

A reading of article 395 of the regulations will show that it carefully avoided a direction to the captains to "preserve a moderate rate of speed" during foggy weather. The instruction was simply that in foggy weather, the captains *must diminish the speed of their engines.* It seems to us significant of the slight pains taken by the petitioner to issue proper regulations, that the International

rule, that was quoted in the regulation which was placed in the hands of its captains for their guidance, was a rule that was no longer in force. Fol. 588. It was Rule 21 of the Rules of 1864, R. S. §4233, whereas the new International Code went into effect July 1st, 1897. 29 Stat., 885. The new rule in regard to speed in fog is No. 16, and is quite different in phraseology, although the requirement in regard to moderate speed in fog is unaltered. Fol. 588.

The petitioner answered that it had not given any instructions to its masters with regard to the courses to be followed by its vessels, and that the captains pursued the courses on their own responsibility. Fols. 432, 435. The *Bourgogne* was a hundred miles north of the usual eastbound track at the time of the collision. *Henderson*, fol. 725.

The petitioner further answered that when the *Bourgogne* left New York July 2, 1898, she carried 491 passengers and 223 persons in her crew, making a total of 714 persons, fols. 297, 436, and that she had 6,604 cubic feet of boat and raft capacity. Fols. 297, 436.

This amount of boat and raft capacity was sufficient, according to the testimony, for no more than 660 persons, fols. 3281, 1603, 1610, 1613, 1618, 1619; and the courts below have so found. Fols. 3748, 7119.

Accordingly, in the event of the sinking of the vessel, at least 54 persons were doomed to be drowned.

The petitioner further answered that there was in force in July, 1898, an agreement between the petitioner and the French government whereby the company received, or was receiving, a money compensation for certain services performed. Fols. 261-2, 415-15, 202-3-4, 440-1. It annexed a pamphlet containing the law of June 24, 1883, "concerning the postal maritime service between Havre and New York" and the conditions of the contract for the exploitation of the service. Fols. 302, 440. The pamphlet appears in the record at pages 2223, 2258.

This contract provided for a weekly service between Havre and New York, and required the petitioner to make "52 voyages *going and returning* a year," fol. 6,658; it required all the steamers to develop on their trials under forced draught when half laden a speed of 17 1/2 knots, and to develop and maintain during the service the mean annual speed of 15 knots an hour at the minimum. Fol. 6,681. In case the mean annual speed should exceed 15 knots a premium was to be paid to the petitioner, calculated at the rate of Fr. 12 a ton gross gauge for each tenth of a knot of excess; and if the mean annual speed should not be obtained the subsidy was to be subject to a deduction, calculated at the rate of Fr. 8 a ton gross gauge or each tenth of a knot under the required speed. Fol. 7,024.

In consideration of the maintenance of this service the Minister of Posts and Telegraphs undertook in behalf of the government to pay to the petitioner an annual subsidy of Fr. 5,480,000 for the period of 15 years from July 22, 1886. Fol. 7,048.

In consideration of the subsidy the petitioner undertook to maintain the service provided for and to carry all the government mails, postal packages, or bullion that might be shipped without further charge. Fols. 7029, 7030; 6660, 6661.

In pursuance of this contract all the petitioner's steamers were operated in the postal service, and were considered to be postal ships. Fol. 1,435.

The *Bourgogne* was operating under this contract at the time of her loss. Fols. 261, 414, 302, 303, 304; 440, 441, 1352, 1353, 1356, 1384.

It further appeared from these answers that the petitioner had received the following sums of money representing freight for the voyage:

For passage money on the trip from Havre to New York. Fol. 441..	Fr. 44,480.70
For passage money on the trip from New York to Havre. Fol. 441..	100,703.08
For freight on the trip from Havre to New York. Fol. 442.....	14,088.95
For freight on the trip from New York to Havre. Fol. 442.....	12,716.43
Total,	Fr. 171,989.16

The petitioner had also received Fr. 5,473,400, which was "the annual allowance" from the French

government, fol. 441, for the year ending July 22, 1898. Fols. 261, 414, 415. This was the payment for 52 voyages "going and returning." One fifty-second part of this sum, which was earned on the round voyage of the *Bourgogne*, is Fr. 105,258.07.

It thus appeared from the admissions of the petitioner that it had received as freight on cargo, passage money, and subsidy in respect of the voyage in question, Fr. 277,247.23, or substantially $55,449.44.

The filing of these answers showed that the averment of the petition that the petitioner's interest in the pending freight "is and amounts to nothing," fol. 91, was not true, and that accordingly the petitioner had not made a full surrender of its interest in the vessel and freight to the trustee, as required by law. All that had been delivered to the trustee was "two boats and two life rafts." Fols. 469, 7,133.

A motion was thereupon made to the court by the trustee and the claimants to require the petitioner to pay over to the trustee the freight that it had received for the voyage as aforesaid. Pp. 155-159. The District Judge did not decide the motion. On May 11, 1901, he endorsed on the papers the following memorandum: "Let this motion be reserved generally without further action at this time." Fol. 476.

Meanwhile the claimants had tried to show, by the petitioner's servants, that its steamers

were in the habit of running at immoderate speed in fog, contrary to law, that knowledge of the fact was communicated to the offices of the petitioner, and that it had not taken, and was not taking, any steps to stop the practice or to enforce observance of such regulations as it had made for the navigation of its steamers in fog. They called three captains of steamers of the petitioner operating in the service between New York and Havre, Captain Santelli, Captain Poirot and Captain Fajolle, two of whom had at times commanded the *Bourgogne*, and subpœnaed them to produce their log books. These efforts were wholly thwarted and defeated by the tactics of the petitioner's counsel, who instructed the witnesses either that they need not be sworn, fols. 1016-17; or that they should not answer the questions of the claimants' counsel with regard to Article 395 of the company's regulations, fols. 930, 931; or that they need not produce or answer questions on the log books which they had been subpœnaed to produce and had with them, fols. 937, 938, 1060; and after the court had ruled that the inquiries of claimants' counsel were material, and the instructions of the petitioner's counsel were improper, fols. 945-7, told the witnesses that they could answer or refuse to answer the questions of claimants' counsel as they chose. Fol. 1161.

The claimants thereafter applied for and obtained an order from Judge Brown, May 15, 1901, requiring the production of all the log books of the *Bourgogne* and of all other vessels commanded by Captain Deloncle for a period of two

years prior to the collision. Fol. 510. The order was immediately dispatched by the petitioner's New York agent to its head office in Paris. Fols. 2,963, 2,964.

On June 15, 1901, an order was made by Judge Brown that the trial of the cause be begun on June 21, 1901, fol. 1,302, but owing to his illness, he postponed the trial on July 2nd, until the first day of the October Term, 1901. In the meantime, during the summer of 1901, Judge Brown, to the great regret of the bar, resigned his office.

At the opening of the October Term, Judge Adams, who succeeded Judge Brown, considered that he was disqualified to hear the case, and made an order that it "be sent to Judge Thomas to be disposed of by him." Fol. 1,308.

On October 9, 1901, Judge Thomas, on account of the pressure of business in his own district, ordered that the trial be held before Judge Townsend, of the District of Connecticut. Fol. 1,313. The trial was begun before Judge Townsend on the same day. Fol. 1,316.

At the beginning of the trial the petitioner claimed that it was not called upon to offer any proof in support of the averments of the petition, and, after the pleadings had been presented to the court, fols. 1,317-1,326, it rested its case. Fol. 1,327. Counsel for the claimants thereupon asked for a decree against the petitioner by default. After some discussion the court held that the burden was upon the petitioner to establish by

evidence that the loss of the *Bourgogne* had occurred "without its privity or knowledge," and permitted the petitioner to reopen its case and offer proof. Fol. 1,338.

Proofs were adduced by both parties before the Judge, and a large number of depositions were permitted to be taken by both sides, out of court after the hearing and prior to the final submission of the cause.

The petitioner did not produce nor take the deposition of any of its officers or general managers.

It studiously refrained from producing any witness who could give evidence of the actual knowledge of its officers and managers in regard to the operation of the vessels, especially with regard to the speed at which they were customarily run in fog.

The witnesses highest in authority that were examined were Paul Simon, p. 469, the Marine Superintendent at Havre, Paul Launes the chief engineer of the petitioner at Havre, p. 448, and Eugene de Bocande, the agent at New York. Pp. 990, 1089. Its other witnesses testified merely to the equipment and navigation of the vessel on the voyage in question.

The proceedings in Court appear in the record from page 438 to and including page 609. All the other testimony was taken out of court.

On the first day of the trial, October 9, 1901, counsel for the claimants called attention to the order of Judge Brown, dated May 15, 1901, re-

quiring the production of the log books, and demanded that they be produced. Petitioner's counsel stated that he had transmitted the order to the company, but that he did not produce the logs and had a letter which stated the answer of the company. The letter was objected to by counsel for claimants. The court ruled that the letter was not evidence, and that, if the logs were lost, the petitioner would have to put somebody on the stand to prove the fact. Fols. 1,404, 1,405. The letter was again offered at the trial during the examination of the petitioner's former superintendent at Havre, and was again excluded as hearsay. Fols. 1,423-1,426.

The upshot of the matter was that the logs were never produced and no legal excuse was offered for their non-production. It is therefore presumed that the logs were in the petitioner's custody, and that they contained entries that would have helped the claimants. *Post*, pp. 117-130. The order for their production was deliberately disobeyed, and the evidence which they would have afforded was withheld. *Neither of the courts below made the slightest reference to this action of the petitioner.*

The taking of testimony out of court having been concluded, the case was argued and submitted to Judge Townsend, March 10, 1902. Fol. 12. On March 22nd the learned judge filed an opinion, fol. 3718, pp. 1245-1264, in which he held:

1. That the voyage for which the freight, if any, should be surrendered was the voyage from New York to Havre, and that the freight and passage

money for that trip, though paid in advance, had not been earned, and accordingly need not be accounted for. Fols. 3740-3748.

2. That the *Bourgogne* was not in fault for the violation of Section 4488 of the Revised Statutes of the United States which required her to be provided with "such numbers of life boats, floats, rafts, life-preservers, and drags as will best secure the safety of all persons on board of such vessel in case of disaster," although she carried 714 persons, and had life-boat and raft capacity for only 658. Fols. 3748-3754.

3. That the *Bourgogne* "must have been running at the rate of about ten miles an hour in fog," and was for that reason in fault for the collision. Fols. 3755-3760.

4. That the petitioner was not liable for claims for loss of life. Fol. 3773.

5. That the collision and the consequent damage occurred without the privity or knowledge of the petitioner.

On this point the Judge considered the regulations promulgated by the company with regard to navigation of its vessels in fog, fols. 3763-3766, and intimated that he should perhaps "take judicial notice of the almost universal practice of running ocean liners at excessive speed in fogs." He found that there was considerable testimony "to the effect that the vessels of the French Line did sensibly and materially reduce their speed on

such occasions," fol. 3,766, but could not cite any testimony to the effect that the steamers preserved a moderate speed. He adverted to certain testimony of the petitioner that its vessels were "slowed down" in the fog, and to the testimony of six witnesses for the claimants to the contrary, and concluded:

"But even if it be assumed that the commanders of the steamships were in the habit of violating the foregoing rules, and that the company had actual knowledge thereof, there is not sufficient evidence to show that the company was negligent in its failure to enforce the rules." Fol. 3,767.

The petition was accordingly granted. Fol. 3,774.

At the conclusion of the opinion the learned district judge said:

"The testimony and exhibits in this case are very voluminous. Inasmuch as the only time permitted for its disposition has been during the crowded week during which my term of office as District Judge expires, it has been impossible to give the full consideration to the complicated questions of fact and law which the importance of the interests involved demand and would otherwise have received." Fol. 3774.

On March 22, 1902, an interlocutory decree was entered by Judge Townsend, in accordance with the conclusions stated in his opinion, and directing "that the claims in this cause other than those for alleged damages for alleged negligence resulting in loss of life, which are hereby ex-

cluded, be and the same are hereby referred to Thomas Alexander, Esquire, of New York, who is hereby appointed a commissioner to take testimony as to the amount of such claims and report the same to this court, together with his opinion with all convenient speed." Fol. 3,781.

In view of the provision in this decree that the life claims

"are hereby disallowed and excluded from consideration in this proceeding,"

a motion was made to vacate the injunction so as to permit the life claimants to continue their actions in the State Court. Pp. 1,267-1,269. On the hearing of this motion the court held that the decree merely meant that the life claims should not be considered *by the commissioner*. Pp. 1,270-1,272.

The petitioner thereupon moved, September 11, 1902, to amend the decree; and the court, on September 29, 1902, entered an order correcting it so as to read that the life claims should be "excluded from consideration *by the commissioner, in this proceeding.*" Pp. 1,275-1,276.

The commissioner appointed to assess the damages suffered by the claimants other than for loss of life filed his report May 9, 1904. Pp. 1,294-1,301.

The claim of the S. S. White Dental Company for loss of cargo was assessed at the sum of $17,108.40, but was disallowed on a finding that

it resulted from faults in navigation within the provisions of the Harter Act. Fols. 3,868-3,869.

The claims allowed by the commissioner were as follows: Fols. 3,876-3,887.

Pauline Henuy, as administratrix of Juliette Cicot, for loss of money and personal effects,	$2,802.00
Henry Hyer Knowles, as administrator of Gertrude Lalla Rookh Knowles, for loss of personal effects,	$2,000.00
William C. Perry, as administrator of Kate M. Perry, for loss of money and personal effects,	$5,277.50
William C. Perry, as administrator of Florence Perry, for loss of money and personal effects,	$1,050.00
William C. Perry, as administrator of Sadie Perry, for loss of money and personal effects,	$1,050.00
John Perry, as next of kin of Katherine Perry and Albert Perry, for loss of personal effects,	$ 350.00
Louis Delfonte, for loss of personal effects and for personal injuries,	$ 432.00
Henry Cirri, for loss of personal effects and for personal injuries,	$1,018.00
George Deslions, for a collection of curios shipped and paid for as excess baggage,	$25,000.00
Total,	$38,979.50

Exceptions to the commisioner's report by various parties were overruled and the report was confirmed by Judge Thomas, June 24, 1904.

P. 1,324. An order was entered on his decision June 30, 1904. P. 1,325.

The final decree was entered by Judge Thomas, July 11, 1904. Pp. 1,327-1,331. On the settlement of the form of the decree Judge Thomas endorsed on it the following memorandum:

"This decree substantially follows the practice of both the Eastern and Southern Districts of New York as regards the question of an interlocutory judgment and is in other respects deemed correct." Fol. 3975.

George Deslions, Pauline Henny, as administratrix, William C. Perry, as administrator, John Perry, as next of kin, Henry Hyer Knowles, as administrator, Louis Delfonte, Henri Cirri, and the S. S. White Dental Company, appealed from so much of the final decree as was adverse to them, July 20, 1904, pp. 1,331, 1,332, and duly assigned error. Pp. 1334-37. On the same day, Arthur E. White, as executor, appealed from so much of the final decree as was adverse to him. Pp. 1,347-1,348. Josephine Chanut appealed from so much of the final decree as was adverse to her on August 4, 1904. Pp. 1,344, 1,346.

The petitioner after waiting nearly six months appealed from so much of the final decree as was adverse to it on January 9, 1905. Pp. 2,214-2,217.

When the appeals came on for hearing in the Court of Appeals in April, 1905, the Court, on the application of the petitioner, ordered that the questions as to the liability of the petitioner and

as to its right to a limitation of liability, should be argued first; and this course was followed. The Court announced its decision on these questions June 23, 1905. Fol. 7,056; pp. 2,259-2,275. It held as follows:

1. It reversed the decision of Townsend, *J.*, to the effect that the petitioner need not account for the freight and passage money collected on the crossing from New York to Havre on which the *Bourgogne* was lost, fols. 7,066, 7,071, and decided that the petitioner should pay over to the trustee Fr. 100,703.08 for prepaid passage money, and Fr. 12,716.43 for prepaid freight from New York to Havre, aggregating Fr. 113,419.57, with interest from the date of the disaster. Fols. 7,071, 7,072.

2. It affirmed the decision of the Court below that the freight and passage money collected for the crossing from Havre to New York need not be accounted for by the petitioner. Fols. 7,072-7,081.

3. It affirmed the decision of the Court below that the petitioner need not account for any part of the subsidy received from the French government. Fols. 7,081-7,088.

4. It reversed the decision of the Court below denying the right of the death claimants to recover, and decided that claims for damages by reason of loss of life should have been sustained. Fols. 7,088-7,090.

5. It affirmed the decision of the court below that the *Bourgogne* was in fault for running at an excessive rate of speed in fog, finding that she "probably was going faster than 10 knots," and that her speed was the proximate cause of the collision. Fols. 7,090-7,094.

6. It affirmed the decision of the court below "that the disaster was done, occasioned or incurred without the privity or knowledge of the owners." Fols. 7,094, 7,118.

On this point the court considered Article 395 of the Regulations issued by the petitioner for the guidance of its captains in navigating in fog, and held that the rule was sufficient. Fols. 7,094-7,099.

The Court further decided that "however positive and precise the rule may be, it will not avail the person who has prescribed it if he encourages, or sanctions, or knowingly tolerates its violation." Fols. 7,099-7,100.

It next considered the question whether or not the petitioner did encourage, sanction, or knowingly tolerate the violation of its rules, but, instead of holding that the burden was on the petitioner to furnish some evidence that it exercised reasonable care to compel obedience to its regulations, took the view that the burden was on the claimants to show that such care was not exercised, and concluded as follows:

"Upon the proof *as it stands* we cannot find that the petitioner's officers knowingly tolerated

or encouraged the running of its steamers at excessive speed in fogs, or were negligent in failing to enforce the rules." Fol. 7,118.

There is no finding by the court that the petitioner's officers *did not* knowingly tolerate or encourage the running of its steamers at excessive speed in fog; yet, in the absence of such a finding, it held that the disaster "was done, occasioned, or incurred without the privity or knowledge of the owners." Fol. 7,118.

7. It affirmed the decision of the court below that the steamer was not in actual violation of statutory rules regarding the equipment of the steamer with life-boats, life-rafts, &c. Fols. 7,119, 7,120.

8. It affirmed the decision of the court below in-so-far as it disallowed the claim of the S. S. White Dental Company. Fol. 7,120.

There remained for consideration the questions raised on the appeal of the petitioner.

On December 14, 1905, the claimants made a motion in the Court of Appeals, based on a certificate of Thomas Alexander, who had succeeded Samuel H. Lyman as trustee, that no money or property had been delivered to him in this proceeding with the exception of a life boat and raft, that the court should decline to proceed with the hearing of the appeal, for the reason that the petitioner had not paid to the trustee the freight and passage money, aggregating Fr. 113,419,57,

which the court on the first hearing held that the petitioner should pay over, and for the further reason that in order to proceed regularly the court must have possession of the limited liability fund. Fols. 7,126-7,129.

The extract from the minutes of the clerk of the Court shows that on the same day "the motion papers were handed up, and notwithstanding motion the court orders the cause to be heard." Fol. 7,135.

The questions arising on the petitioner's appeal were thereupon argued December 14, 1905. They were decided February 22, 1906. Fol. 7,136; pp. 2,279-2290.

The errors assigned by the petitioner were overruled, and that part of the decree which was involved in its appeal was affirmed, with interest and costs. Fol. 7,176.

An order to the above effect was entered by the court March 5, 1906. P. 2,291.

A motion for a rehearing was overruled April 12, 1906. P. 2,292.

On May 14, 1906, George Deslions, William C. Perry, John Perry, Pauline Henuy, Louis Delfonte, and Henri Cirri, presented an application to this court for a writ of certiorari, which was granted May 24, 1906. P. 2,295; *George Deslions, et. al.*, v. *La Compagnie Transatlantique*, 202 U. S., 622.

On February 25, 1907, a petition for a cross

writ of certiorari was filed by the petitioner. The court on March 4, 1907, ordered:

"Consideration of the petition for a cross writ of certiorari postponed to the hearing of the case." *Extract from minutes for March 4, 1907.*

ARGUMENT.

The claimants purpose to argue, on this appeal, that the courts below erred in holding that the loss of the *Bourgogne,* and the loss and damage suffered by the claimants in consequence thereof, occurred without the privity or knowledge of the petitioner.

They will contend that the collision was caused and contributed to by the fault of the *Bourgogne* in running at immoderate speed in fog, contrary to law.

They will maintain that the petitioner, by its contract with the French government, encouraged its captains to run its steamers at nearly their full speed in all kinds of weather, year in and year out, and neglected to issue sufficient instructions to them to secure the observance by them of Article Sixteenth of the International Regulations for the Prevention of Collisions at Sea, which requires that: "every vessel, shall in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed"; or that, if the regulation actually issued be deemed to have been sufficient for this purpose, then that the petitioner failed to show that it had exercised reasonable care to see that the regulation was observed, and had

knowledge of, and was in privity with, the practice of running its steamers at excessive speed in fog.

They will lay stress on the fact that the petitioner has withheld evidence on this subject which was called for by an order of the court, and will contend that the failure to produce this proof leads to an irresistable inference that it was adverse to the petitioner.

They will further argue, in this connection, that the petitioner failed to equip and outfit the steamer with a sufficient number of life-boats and life-rafts, to secure the safety of the passengers in case of disaster, as is required by Section 4488, of the Revised Statutes, and was for that reason in privity with the consequent loss of life.

They will urge finally, that the petitioner did not surrender the amount or value of its interest in the steamship and her pending freight to the trustee, nor provide a bond therefor, and that, accordingly, as the court did not obtain possession of the limitation fund it should not have limited the petitioner's liability.

In the event that the court shall find that the accident occurred without the privity or knowledge of the petitioner, and that the petitioner is entitled to a limitation of its liability, the claimants purpose to argue that the court erred in failing to require the petitioner to account for that part of the subsidy received from the French government on account of the voyage

on which the steamer was lost, and for the freight and passage money which was received by the petitioner for the crossing from Havre to New York, which constituted one leg or the first half of that voyage.

The Court having deferred action on the application of the petitioner for a cross writ of certiorari, the case is now to be heard as if on the appeal of the claimants from so much of the decision of the Court of Appeals as was adverse to them. *Hubbard* v. *Tod*, 171 U. S., 474, 494.

FIRST POINT.

THE COURT BELOW ERRED IN HOLDING THAT THE SINKING OF LA BOURGOGNE BY COLLISION WITH THE CROMARTYSHIRE AND THE CONSEQUENT DAMAGE TO THE CLAIMANTS OCCURRED WITHOUT THE PRIVITY OR KNOWLEDGE OF THE PETITIONER, AND THAT THE PETITIONER WAS ENTITLED TO A LIMITATION OF ITS LIABILITY TO THE AMOUNT OR VALUE OF ITS INTEREST IN THE VESSEL AND HER FREIGHT.

On the finding of both the Courts below that the sinking of the *Bourgogne* was caused by her negligent navigation, a case was presented in which, but for the intervention of a statute changing the general rule of liability, the claimants would obviously have been entitled to be fully paid for their losses.

The law under which the petitioner claims that it is entitled to a limitation of its liability in this proceeding is contained in sections 4283 and 4284 of the Revised Statutes of the United States which read as follows:

"§4283. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, lost, damage, or forefeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

"§4284. Whenever any such embezzlement, loss or destruction, is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel, in proportion to their respective losses; and for that purpose the freighters and [*owner*] [owners] of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto."

As the *Bourgogne* was owned by an incorporated company, Section 18 of the amendatory act of June 26, 1884, dealing with the liabilities of part-

owners, and providing that the individual liability of a part-owner of a vessel shall be limited to the proportion of debts and liabilities that his individual share of the vessel bears to the whole, has no application to this case.

In *The Main*, 152 U. S., 122, the most recent case in which the construction of these acts was directly before the Court, Mr. Justice Brown in delivering the unanimous opinion of the Court, at p. 126, said:

"By the common law, as administered both in England and America, the personal liability of the owner of a vessel for damages by collision is the same as in other cases of negligence, and is limited only by the amount of the loss and by his ability to respond. *Wilson* v. *Dickson*, 2 B. & Ald., 2; *The Dundee*, 1 Hagg., 109, 120; *The Aline*, 1 W. Rob., 111; *The Mellona*, 3 W. Rob., 16, 20; *The Wild Ranger*, Lush., 553 564; *Cope* v. *Doherty*, 4 K. & J., 367, 378. The civil law, too, as well as the general law maritime, made no distinction in this particular in favor of shipowners. *Emerigon, Contrats a la Grosse*, C. 4, §11."

And further at p. 132, the Court said:

"*The English courts have held, very properly we think, that these statutes should be strictly construed.* As observed by Abbott, *C. J.*, in *Gale* v. *Laurie*, 5 B. & C., 156, 164. 'Their effect, however, is to take away or abridge the right of recovering damages, enjoyed by the subjects of this country at the common law, and there is nothing to require a construction more favorable to the ship owner than the plain meaning of the word imports.' To the same effect are the remarks of Sir Robert Phillimore in *The Andalusian*, 3 P. D., 182, 190, and in *The Northumbria*, L. R., 3

Ad. & Ec., 6, 13. Speaking of this statute, Lord Justice Brett, in *Chapman* v. *Royal Netherlands Nav. Co.*, 4 P. D., 157, 184, remarked: 'A statute for the purposes of public policy, derogating to the extent of injustice, from the legal rights of individual parties, should be so construed as to do the least possible injustice. This statute, whenever applied, must derogate from the direct right of the ship owner against the other ship owner. . . . *It should be so construed as to derogate as little as is possible consistently with its phraseology from the otherwise legal rights of the parties.*' '' *Marsden on Collisions*, 5th Ed., pp. 145-150.

The Courts below did not, as it appears to us, follow this rule. They construed the statute most strongly in the interest of the petitioner, and resolved every doubt in the case in its favor. They applied and enforced the statute so as to derogate as *much* as was possible, instead of as *little* as was possible, consistently with its phraseology, from the otherwise legal rights of the parties.

The main facts on which the right to limitation should be granted or denied on the merits are without substantial dispute. They relate to the equipment of the steamship and to the regulation of or the failure to regulate, the operation of the vessels of the line in such fogs as that in which the *Bourgogne* was lost because of her faulty navigation.

The case is not one in which the petitioner is entitled to rest on the rule that the court will not interfere with concurrent findings of two courts on conflicting evidence unless a flagrant mistake is indicated; though we think that, if that

rule were applicable, we could point to such a mistake.

The courts below have not clearly concurred in their findings of fact as to the practice of improper navigation in fog, though they have concurred in the conclusions which they have drawn from such facts as were developed, without substantial dispute, by the testimony of all parties.

The district judge appears to have based his decision on the assumption that even if the facts showed that the petitioner's steamers were customarily operated at immoderate speed in fog, and that the petitioner knew it, yet the petitioner was not negligent in failing to stop the practice. Fols. 3766, 3767. He did not therefore, express any definite conclusion as to the existence of a practice of running at high speed in fog, though he said that perhaps he ought to take judicial notice of it. Fol. 3766.

The court of appeals held on the other hand that it could not find that the petitioner's officers knowingly tolerated or encouraged the running of its steamers at excessive speed in fog, or were negligent in failing to enforce the rules which it issued for the regulation of the service on board. Fol. 7118. But this was an inference from facts not in dispute rather than a finding on conflicting evidence.

The Court moreover erred in assuming that the burden of proof in this connection, was on the claimants. The court should not have reached the conclusion that it did unless it found *affirmatively* that the petitioner's officers did *not* knowingly tolerate or encourage the running of its

steamers at excessive speed in fog and were *not* negligent in failing to enforce its rules. The Court did not make such affirmative findings.

The petitioner alleged that the losses occurred without the fault of the *Bourgogne* and without its own privity or knowledge. The claimants denied both allegations. Under these issues two questions with regard to speed in fog were raised; first, was the *Bourgogne* in fault for running at excessive speed in fog, and second, was the petitioner in privity with such navigation? Unless the petitioner established the negative of these issues, it could not prove that the loss occurred without its fault, privity or knowledge. It produced much evidence on the first issue but both courts found against it. It produced no evidence on the second issue but won on that one.

The allegation that the loss occurred without the privity or knowledge of the petitioner must be affirmatively proved. It cannot be established without proving the negative of any matter of privity or knowledge that is put in issue. The petitioner must prove not only the ultimate fact, but also such subsidiary facts as may be necessary to found the conclusion that is to be established. There is no hardship in requiring the petitioner to establish the negative of any such matter that can be proved, for it has all the proof that exists on the subject in its own possession.

The Court of Appeals held that there could not be any *direct privity* on the part of the petitioner because none of its officers was on board the ves-

sel. Fol. 7095. This ruling, it would seem, puts too narrow a construction on the word *privity*.

The petitioner would be "in privity with the cause of damage," fol. 389, if it encouraged, consented to or connived at the kind of navigation that led to the disaster.

Webster's International Dictionary defines privity as meaning, among other things, "cognizance implying consent or concurrence."

In the Century Dictionary it is defined as "joint or common knowledge and concurrence, particularly in respect to a breach of contract, a tort, or a wrong."

In *Craig* v. *Continental Ins. Co.*, 141 U. S., 638, 646, this court said that "privity or knowledge" means a direct participation by the owner in the negligence that caused the loss. But the Court had said in *Butler* v. *Steamship Company*, 130 U. S., 527,553, that "if the injury or loss occurs *through the fault of the owner*, he will be personally liable, and cannot have the benefit of a limited liability." And it has refused, in three recent cases, to review decisions of the Court of Appeals for the Ninth Circuit, in which findings of privity had been based on *indirect* participation in or imputed knowledge of the negligence that caused the loss. *The Rio Janeiro*, 130 Fed. Rep., 76; 195 U. S., 632; *Parsons* v. *Empire Trans. Company*, 111 Fed. Rep., 202, 208; 183 U. S., 699; *McGill* v. *Michigan S. S. Co.*, 144 Fed. Rep., 788; 203 U. S., 593.

In *Parsons* v. *Empire Transportation Co., supra, Ross, C. J.*, at p. 208, said:

"It was not the intention of Congress by the provisions of Sections 4283-4285 of the Revised Statutes embodying the provisions of the Act of March 3, 1851, nor of any act amendatory thereof, to relieve shipowners of responsibility for their own wilful or *negligent acts.*"

And the same principle was followed in *The Republic*, 57 F. R., 240; 61 *do.* 109.

The Court of Appeals of the First Circuit, considered the effect of the word privity in *Quinlan* v. *Pew*, 56 Fed. Rep. 111. Putnam *J.*, speaking for the majority said at p. 117:

"We, therefore, conclude that the word 'privity', as found in this statute, includes at least as much as the word 'knowledge'; but we of course do not overlook the fact that there is in law imputed knowledge, and therefore there may be imputed privity. Each of these arises where the owners give an order for the doing of a particular thing in a particular way, and assume that it is done, or do not inquire whether or not it is afterwards accomplished. Under such circumstances, the word 'privity' is even more pertinent than 'knowledge', because while the conduct of the owners would in law impute knowledge, they would also actively partake. Each is also imputed to those who refuse to see, or who are guilty of perverseness, or of such crass negligence as amounts to it."

Aldrich, *J.*, who concurred in the result, held, p. 122, that the word privity had a wider meaning than the word knowledge. In his opinion the word privity, as used in the statute, may mean

less than knowledge, and that the circumstances might be such that the failure of the owner to discharge a preliminary duty before the commencement of the voyage, would render him privy to disasters which might result directly therefrom. This view has been adopted in the ninth Circuit. *Parsons v. Empire Transportation Co.*, 111 F. R., 208; *McGill* v. *Michigan S. S. Co.*, 144 F. R., 788; *The Rio Janeiro*, 130 F. R., 76.

In *The Rebecca*, Ware 188, Judge Ware reviewed the Continental doctrine of limitation of liability, and, in the course of his opinion stated the circumstances under which the owner might be said to participate in the negligent acts of his servant in the following terms, p. 206:

"A person participates in the act when he authorize or commands it to be done. He may also be said to participate in the act when it is done by one who is subject to his authority and whose actions it is his right and duty to control; as a parent or master is responsible for the wrongful acts of his children or servants, when he has the power of preventing them and does not. He, having the right and power, and the law imposing it upon him as a duty, is justly considered as authorizing the wrong which he does not prevent."

In order to determine whether the petitioner was in "privity with the cause of damage," the first step is to ascertain the cause. That has been found to have been the immoderate speed of the *Bourgogne* in fog. The next inquiry is, was the petitioner in *privity with that kind of navigation* on the steamer at the time of her loss?

The petitioner had made a rule which it claimed forbade such navigation. But the court said that even a precise rule would not avail a petitioner "if he encourages, or sanctions, or knowingly tolerates its violation", fols. 7099, 7100, and noted that "it is contended that the petitioner did thus sanction or knowingly tolerate excessive speed." Fol. 7100. Then, instead of holding that the petitioner must show that this kind of privity or knowledge did *not* exist, it considered the evidence offered by the claimants, fols. 7100-7118, and in effect held that they had the burden "*to establish* that proposition." Fols 7100, 7118. The conclusion reached was not that the petitioner's proof prevailed, but that "upon the proof *as it stands*, we cannot find that the petitioner's officers knowingly tolerated or encouraged the running of its steamers at excessive speed in fogs, or were negligent in failing to enforce the rules." Fol. 7118. This was a finding that the claimants had not "established" their "proposition." It imposed the burden of proof on them, when it should have been put on the petitioner.

In order to obtain the limitation provided for by statute the petitioner has the burden of proof, and is bound to show, by a fair preponderance of the evidence that the loss in respect of which the limitation is desired, has been "done, occasioned, or incurred without the privity or knowledge of such owner." Unless it has established that *con-*

dition affirmatively it cannot have a limitation of its liability.

In *Quinlan* v. *Pew*, C. C. A., 56 Fed. Rep., 111, 118, Putnam, *J.*, said:

"There is enough here, however, to suggest a question of the burden of proof. While perhaps, in the admiralty courts, this question does not take the sharp form which it does at common law, still the underlying principles touching it are recognized; and as, in this case, the owners were obliged to allege, in order to maintain the privilege of limitation, that they were without privity or knowledge, and as this proposition is one peculiarly within their own cognizance, a certain burden rests on them. 1 *Greenl. Ev.* §§ 78-80, and 3 *Greenl. Ev.* §404."

In *The Colima*, 82 Fed. Rep., 665, at p. 669, Brown, *J.*, said: "To exempt the petitioner from all liability under Sec. 4283, it must appear that the loss or damage was 'done or incurred without the petitioner's privity or knowledge.' To exempt it under the Harter Act from the claims of cargo owners, 27 Stat. 445, 2 Supp. Rev. St., p. 81, it must appear that the ship was seaworthy in fact, or that 'due diligence' was used to make her so. *The burden is upon the petitioner.*"

In McGill v. *Michigan S. S. Co.* 144 Fed. Rep. 788, the owner had entrusted the work of transforming the steamship *Progreso* from a coal-carrying and coal-burning steamer into an oil carrier and burner, to a port engineer, who, as the Court found, was incompetent to superintend the

work, by reason of his lack of acquaintance with the dangerous properties of California fuel oil. It was held that the owner was in privity with certain losses arising from an explosion that occurred during the progress of the work in consequence of such incompetency, and was, therefore, not entitled to have its liability limited.

Gilbert, Circuit Judge, in course of the opinion, at pp. 795, 796, said:

"*The right of a shipowner to limit its liability is dependent upon his want of complicity in the acts causing the disaster, and the burden of proof rests upon him* to show affirmatively that he has properly officered and equipped the vessel for the contemplated service. *Parsons* v. *Empire Trading & Trans. Co.*, 111 Fed. 208, 49 C. C. A. 302; *The Main* v. *Williams*, 152 U. S. 122, 14 Sup. Ct. 486, 38 L. Ed. 381; *The Annie Faxon*, 75 Fed. 312, 21 C. C. A. 366; *In re Myers Excursion Co.* (D. C.) 57 Fed. 240; *The Republic*, 61 Fed. 109, 9 C. C. A. 386; *Quinlan* v. *Pew*, 56 Fed. 11, 5 C. C. A. 438; *The Colima*, (D. C.) 82 Fed. 665. In the *Cygnet*, 126 Fed. 742, 61 C. C. A. 348, the Circuit Court of Appeals for the First Circuit held that the analogous provisions of the Harter Act cannot be invoked to relieve a vessel from liability for a loss occurring from errors in navigation on the part of the master sufficiently negligent to raise a presumption of his incompetency merely upon a showing that the owners had no knowledge or reason to believe that he was incompetent. The Court said: 'There is no evidence in the record that the owners of the tug, either the record owners or the owner *pro hac vice* had made any particular enquiries as to his competency. The petitioners seem to think it is sufficient to main-

tain their case that the owner or owners had no knowledge or reason to believe that the master was not competent; but this form of statement is not sufficient, because it does not comply with the Statute, which requires due diligence. Referring to the negligent act of the master in failing to observe whether his tow was straightened out on her course the court said: 'An omission so gross as this raises so strong a presumption of fact that the master was not competent as practically to throw the burden on the petitioners to establish the proposition that they used due diligence with reference to his selection, whether the statute does or not impose such a burden.' The language of the Court in that case is, we think, applicable to the present case. The acts of Evers and his testimony are such as to raise a strong presumption of his incompetency. The steamship company has introduced no testimony whatever, either to show that he was competent or to indicate that at the time of changing its vessels from coal burners to oil burners, or at any time, it made an enquiry as to his knowledge of the properties of the dangerous agency they were about to introduce upon their vessels, or his fitness to handle it. The limitation of its liability must be denied".

This court refused to review the case. 203 U. S. 593.

In *The Wilderoft* 201 U. S., 378, this Court held that the burden of proof of establishing the condition on which exemption from liability for faults in the management of the ship is based in the third section of the Harter Act must be clearly proved by affirmative evidence. The provision

of that statute is that if the owner shall have used due diligence to make the ship seaworthy and have her properly manned, equipped and supplied, he shall not be liable for faults or errors in management or in the navigation of the ship. Under the limitation of liability Statute, the liability of the owner for the losses there enumerated is limited to the value of his interest in the ship and freight, if the losses occur without his privity or knowledge. In each case the exemption from responsibility is based upon a condition. What the Court said must be proved by the shipowner to show that the condition had been fulfilled in one case would seem to be equally applicable in the other.

The ruling of the Court on this question in the *Wilderoft*, as announced by Mr. Justice Day at pp. 388, 389, is as follows:

"The relief afforded by the third section of the Harter Act to the owner of a vessel, transporting property, is purely statutory. In the case at bar there could be no question as to the liability of the vessel owner from the established facts of the case, but for the immunity afforded by that act. To permit a cargo of sugar to be injured by the introduction of fresh water in the manner shown, but for the provisions of this act, would have made a case of clear liability against the owner, and where the statute has given immunity against such loss by reason of error in navigation or management, it does so upon the distinct condition that *the owner shall show* that the vessel was in all respects seaworthy and properly manned, equipped and supplied for the voyage; or, if this cannot be established, that he has used due dili-

gence to obtain this end. The discharge of this duty is not left to any presumption in the absence of proof. *It is the condition precedent, compliance with which is required of the vessel owner in order to give him the benefit of the immunity afforded by the act.* The reason for requiring this proof by the owner is apparent. He is bound to furnish a seaworthy and properly equipped ship for the purpose of the voyage. Whether he has done so is a matter peculiarly within his own knowledge. The inspection which he can give, but which the shipper cannot give for lack of opportunity, will establish whether this duty has been complied with. The whole matter is in the control of the owner. The law says, in substance, that when the owner can show that he has discharged this duty he shall be relieved from errors of navigation and management on the voyage, over which he has not such direct control. It is not a case where there is either the necessity or propriety of resorting to presumptions. *It is only when he has discharged the burden which the law imposes upon him, * * * that the law relieves him of the liability* which he would otherwise incur."

The petitioner did not support the burden of showing the condition of absence of privity with the kind of navigation that led to the loss of the *Bourgogne*, on which alone a limitation of liability is authorized. It offered no proofs on the subject beyond putting in the rule known as article 395 of its regulations. It did not prove that it exercised any supervision to ascertain that the rule was obeyed, in practice, or that it had taken steps to compel obedience to it, though

both these points were in issue. It failed, therefore, to show that it exercised care to enforce obedience to the regulation, and that the disregard of it on the occasion in controversy was exceptional and without its privity or knowledge.

In granting to the petitioner a limitation of its liability in the absence of proof on these points, and in the absence of proof that Captain Deloncle was a competent and prudent navigator, accustomed to obey the law, *post*, p. 154, the Circuit Court of Appeals of the Second Circuit seems to have followed a different rule of decision from that which has been enunciated in the Ninth Circuit, in the cases above referred to, and in this court in the case of *The Wildcroft*.

The circumstances from which it appears that the petitioner encouraged, sanctioned and knowingly tolerated, and was thus in privity with the kind of navigation that resulted in the loss of the *Bourgogne*, are not in any substantial dispute. It is our purpose now to review those circumstances in detail.

I.

The Bourgogne was lost and the damages suffered by the claimants were occasioned by the negligent act of the petitioner's servants in running the steamer at an immoderate rate of speed in a dense fog.

In view of the fact that the courts in France

have found that the steamer was running in a dense fog at 12 knots an hour, fols. 3652, 3658, 3678, 3704; that the English court, in which an action was brought to recover the damages suffered by the *Cromartyshire* in the collision, found that the *Bourgogne* was proceeding at "reduced full speed" and "at an utterly unjustifiable speed in fog"; *London Times* Jan. 13, 1899, p. 6; *do* May 12, 1899, p. 14; that the district court in this cause found that she was proceeding "at about 10 knots," fol. 3759, and that the Court of Appeals found that she "probably was going faster than ten knots," fol. 7092—much argument in support of this proposition does not seem to be required. We advert to it merely for the purpose of showing that the steamer was running at the time of the collision, in a dense fog, at substantially her full speed, as she was then loaded, of 16 knots an hour. Fols. 1500, 1501.

Witnesses called by the petitioner state that at the time of the collision the fog was so thick that one could not see further than ten metres. Fols. 1550, 1562, 1474. None of the engineers who were on watch survived. The speed of the engines can only be told, therefore, by the evidence of those who observed the speed of the ship, by the condition of the steam that was found by the witnesses who were off watch at the time of the collision but went into the engine room immediately afterwards, and by the indicator of the telegraph on the bridge.

The collision occurred at 5:10 A. M. on July 4, 1898. Fol. 2943.

Fog had been encountered in the watches between 12 and 5 o'clock. Laisne, an assistant engineer, heard the siren sounded in his watch from 12 to 2. Fol. 1519. He states that the full speed of the ship, loaded as she was, was 16 knots, fols. 1500-1501, and that there was no reduction of speed on account of the fog in his watch. Fols. 1499-1500. Dufour, a waiter, says the weather was thick and the siren was sounded in his watch from 1 to 3 A. M.; fols. 1547, 1550; while Lebris, the lookout on the mast, fol. 1561, states that fog had prevailed since 4 o'clock, at which time he went on watch. Fol. 1563. The protest states that the collision occurred "in thick fog." Fol. 2943.

Corre, the helmsman, fol. 1254, states that the fog became thick at 4:30, and that *he did not see any change of the telegraph after the fog set in.* Fol. 1274. When the fog horn of the *Cromartyshire* was heard, he said the officer put the telegraph at "stand-by." Fol. 1273. He had testified in the French court that the telegraph stood at full speed at the time of the collision. Fol. 3701.

Full speed of the engines was 63 revolutions a minute. Fols. 1468, 3427. Voisin, a fireman, testified in the French Court that the speed of the engines was 62 turns at 5 o'clock A. M. Fols. 3703-3704. The revolutions were thus but one short of the full number only ten minutes prior to the collision. But the ship had been running in fog for hours.

There is testimony that after the fog came on the firemen had closed the ash-pit doors to diminish the steam pressure, fols. 1279, 1484, 3702, though they admit that no orders had come from the deck to reduce the speed. Fols. 2142, 2143, 2244. It is said that closing the ash-pit doors left the pressure of steam at 10 kilos, fol. 1295, equal to 140 pounds pressure to the square inch, fol. 1298, as against a full pressure of 11½ kilos, fol. 1295, or 162 pounds. Fol. 1298. But 10 kilos pressure were sufficient to run the engines at full speed. Fols. 1468, 1509, 1510, 1512, 1513.

The finding of the French Court that the steamer was running at the rate of 12 knots was probably based on the testimony of Calvary, a fireman, that the speed had been diminished twice after 3 o'clock A. M., fols. 2156, 2157, and that "at the time of the collision" the revolutions of the engine were 43 per minute. Fol. 2113. Having regard to the pitch and slip of the propeller, fol. 2941, forty-three revolutions would give a speed of about twelve and a half knots. *See post*, p. 90. But the Court seems to have overlooked the fact that the witness *did not count the turns* of the engine, fol. 2146, and the further fact that he did not hear any signals or orders to reduce speed. Fol. 2142. The evident readiness of the witness to swear falsely, fols. 2124-2127, deprives his testimony of credibility.

Delfonte a passenger came on deck at four o'clock A. M. Fol. 1779. The weather was then

very foggy, and the vessel was running "at a great speed," "the same speed as she was on the day before." Fol. 1780. The witness looked at the water "a few minutes before the collision" and thought the steamer was going at about the same speed as on the day before. Fol. 1791.

Lacasse, a passenger, who was an experienced seaman and had served in the French navy, fols. 869-873, was awakened by the siren, came on deck at 1 o'clock A. M. and remained on deck until 5 o'clock. Fols. 813, 814, 820. The fog was then so thick that standing on the stern of the ship he could not see the funnels. Fols. 814, 815, 817. There was no slackening of the speed between 1 o'clock and the collision; the ship ran all the time at her full speed of 16 knots. Fols. 819, 820, 823, 827.

The master of the *Cromartyshire* judged that the *Bourgogne* was going faster than 15 knots an hour. Fols. 670, 585.

The *Bourgogne* passed Sandy Hook July 2, at 1 o'clock P. M. Fols. 809-811. The collision occurred at about 5 A. M. of July 4th, fol. 812, or 38 hours later. The distance from Sandy Hook to the place of the collision was 600 miles. Fol. 817. The average speed of the vessel for the entire time must therefore have been 16 knots per hour. That was her full speed as she was then loaded. Fol. 1501.

As the telegraph stood at full speed there is every reason to believe that the *Bourgogne* was running at substantially that speed at the moment of collision.

The Court below held that the petitioner had

given instructions to its captains, which if followed, would have prohibited such navigation and that accordingly the petitioner was not in privity with it. This ruling, we claim was error.

II.

The petitioner did not issue and enforce sufficient instructions to its captains to run its steamers at moderate speed in fog.

a. It is the duty of the managers of a steamship line, which is engaged as a common carrier of passengers and freight, to issue instructions for the guidance of its servants in the conduct of the business, and to see that they are enforced.

This is the undoubted rule in measuring the duty of railroad carriers to secure the safety of their employees. A carrier by sea cannot be different from a railroad in this respect.

The degree of care due from the carrier to the passenger is at least as great as that due to the employee. *Wabash Railway Co.* v. *McDaniels*, 107 U. S., 454, 461, 462. It should be greater. The carrier owes the passenger the highest degree of care.

It is well settled that where accidents happen to railroad employees by the fault of fellow employees under conditions that would have been prevented by the making and *enforcement* of reasonable rules for the conduct of the business, the defense of fellow service is not available.

The railroad may be held liable because of its failure either to *promulgate* or to *enforce* such rules and regulations. *Doing* v. *N. Y. Ontario & Western Ry.*, 151 N. Y., 579, 583; *Abel* v. *Delaware & Hudson Canal Co.*, 103 N. Y., 585; *Whittaker* v. *Del. & Hudson Canal Co.*, 126 N. Y., 549; *Cooper* v. *Iowa Central Ry.*, 45 Iowa, 134; *Chicago, etc. Ry. Co.* v. *Taylor*, 60 Ill., 461; *Thomas* v. *Cincinnati etc. Ry.*, C. A., 97 Fed. Rep., 251; *Northern Pacific Ry.* v. *Nickels*, 50 Fed. Rep., 718.

So here, the petitioner should be held to be in privity with the improper navigation of the *Bourgogne* in fog, if such navigation could have been prevented by the petitioner by the *promulgation* and *enforcement* of reasonable rules for navigation under such circumstances.

In *Abel* v. *Delaware & Hudson Canal Co.*, plaintiff's testator, a car repairer in defendant's employ, while at work on a car standing on a side track was killed by another car that was negligently backed against the one on which he was at work by other employees of the defendant. In an action to recover damages it appeared that other railroad companies had adopted rules providing for the placing of a blue flag by day and a blue light by night on a car under repairs, and prohibiting the moving or coupling of a car while protected by such a signal. No similar rule, nor any rule applicable to such a case, had been adopted by defendant. The trial court directed a nonsuit on the

ground that the accident occurred by the negligence of fellow servants. The New York Court of Appeals reversed the judgment, holding that it should have been left to the jury to say whether the defendant's rules were proper and sufficient for the protection of its repair men, and whether it should not have taken greater precautions by rules or otherwise for their safety.

The Court, at pp. 585, 587, said:

"The law imposes upon a railroad company the duty to its employes of diligence and care, not only to furnish proper and reasonably safe appliances and machinery and skilled and careful co-employes, but also to make and promulgate rules which, if faithfully observed, will give reasonable protection to the employes. *Slater* v. *Jewett*, 85 N. Y., 61; *Besel* v. *N. Y. C. & H. R. R. R. Co.*, 70 id. 171; *Sheehan* v. *Same*, 91 id. 339; *Dana* v. *Same*, 92 id. 639. * * * We do not perceive how it was possible to say, as matter of law, that the rules of the defendant were proper and sufficient for the protection of its repair men, and that it should not have taken greater precautions by rules or otherwise for their safety."

In *Cooper* v. *The Iowa Cent. R. R.*, 44 Iowa, 134, Beck, *J.*, in a similar case said:

"It is incumbent upon Railway Companies to use ordinary prudence in making and publishing to their employees sufficient and necessary rules and regulations for the safe running of their trains, and for the government of their employees."

In *Whittaker* v. *Delaware & Hudson Canal Co.*,

126 N. Y., 544, an accident occurred through a collision, at a station, between an incoming freight train on which the plaintiff's intestate was employed as fireman, and an engine left standing on the main track of defendant's road in violation of rules of the company by its engineer while he was waiting in the office near by for orders. The defense was that the presence of the stationary engine on the track was due to the fault of its engineer who had placed and left his engine on the main track against the rule of the company, and that he was a fellow servant of the plaintiff. It was held that the negligence of the defendant in failing to exercise supervision over the management of its road and to compel obedience to its rules was the proximate cause of the accident, and that defendant was liable.

Ruger, *Ch. J.*, at page 549, said:

"There was evidence in the case to show that this engineer and others, for a period of at least one year, had been in the habit of disobeying this rule of the company, and violating its requirements by placing their engines upon the main track at Quaker Street and leaving them there while waiting orders. This practice had been so frequently indulged in and had continued for such a length of time that the jury were justified in finding that it had come to the knowledge of the railroad company and was pursued by their acquiescence, or as the result of a want of vigilance in supervising the management of their road.

"A railroad company does not discharge its whole duty to the public by merely framing and publishing proper rules for the conduct of its

business and the guidance of its servants, but *it is also required to exercise such a supervision over its servants and the prosecution of its business as to have reason to believe that it is being conducted in pursuance of such rules. Wabash R. Co.* v. *McDaniels*, 107 U. S., 452; *Chapman* v. *Erie Ry. Co.*, 55 N. Y., 579; *Baulec* v. *N. Y. C., & H. R. R. Co.*, 59 id. 356.

"Neither is its duty in respect to the employment of servants satisfied by the hiring of capable and competent persons in the first instance; but it *is also required that they should exercise such an oversight and supervision of such servants, that if they afterwards become habitually or notoriously incompetent or unfit, from carelessness or bad habits, to perform their duties, this incompetency, if long continued, should be discovered and guarded against. Laning* v. *N. Y. C. R. R. Co.*, 49 N. Y., 521. It is not necessary that this incompetency should be brought to the personal knowledge of the master; but if it continues for such a length of time as that a careful and diligent supervision of its business ought to bring it to its knowledge, it is chargeable with notice of its existence. * * *

"The rule in reference to constructive notice is well expressed in the case of *Hilts* v. *Chicago and Grand Trunk R. Co.* (55 Mich., 437), as follows: 'A master who retains an incompetent servant in his employment, after knowledge comes to him of the unfitness of the servant for the service in which he is engaged, or of whose unfitness he might have known by the exercise of due diligence or ordinary care, is liable for injury to another servant caused by the negligent acts of the incompetent servant.'"

In *Doing* v. *New York, Ontario & Western Ry.*,

151 N. Y., 597, it was held that a railroad company was bound to prevent by proper rules and regulations the action of its employees in shunting upon tracks leading to a repair shop imperfectly controlled cars which might run into the shop and endanger the lives of employees who are working there, and that in the absence of such precautions the defense of fellow service was unavailing.

O'BRIEN, *J.*, at p. 583, said:

"We will assume then, what cannot be questioned, that the workmen were doing the defendant's work in a dangerous and reckless manner. But these workmen were doing nothing but what, according to the testimony, they had been doing for years before. If the defendant permitted its employees to carry on its operations upon these three tracks outside the shops in such a manner as to endanger the lives of those inside, who could not protect themselves, it failed to discharge to the deceased the duty which the law imposed upon it of furnishing him a reasonably safe place to do his work. The defendant had the power to control and regulate its business. The law imposed upon it the duty of *making and enforcing* such reasonable rules and regulations for the government of the men in its service as to prevent or guard against injury by one servant to another in so far as that was reasonable and practicable. *It could certainly put an end to the practice of propelling cars upon these tracks by a force that could not be controlled;* and it could provide for moving them in some other and safer way. *In other words, it could change this method of doing the work by making proper rules and regulations to that end.* The jury could have

found from the evidence that the practice of kicking or shunting cars upon these tracks in the direction of the doors of the repair shop was known to the defendant. The danger to be apprehended from such a practice was so obvious that the defendant, in the proper discharge of the duties which it owed to its employees, was bound to guard against it by proper rules and regulations, so far as that was reasonable and practicable."

The necessity of exercising such supervision as will insure constant obedience to the rules, and their enforcement in the regular operation of the service was strongly insisted on in *Northern Pacific Ry. Co.* v. *Nickels*, 50 Fed. Rep. 718. It there appeared that a brakeman on entering the service of the Railway Company had been furnished with a rule directing that persons having to make couplings of cars should use a stick or pin, and that he subsequently suffered an injury in coupling a car without using a stick or pin. The plaintiff and other brakemen testified it had not been customary for persons coupling cars to use a stick or pin, and that those engaged in this work in a yard in front of the office of a division superintendent of the line had been frequently seen by the latter coupling cars in this manner without sticks, and he had made no complaint or objection to the practice. The trial judge charged the jury that it was a question of fact for them to determine from all the evidence whether this rule requiring the use of a stick or pin in coupling cars was in force at the time of the accident, or had been waived by the conduct

of the railroad. In affirming the judgment on the verdict in favor of the plaintiff, Sanborn, Circuit Judge, said, at p. 722:

"To hold that this defendant Company could make this rule on paper, call it to plaintiff's attention, and give him written notice that he must obey it and be bound by it on one day, and know and acquiesce without complaint or objection in the complete disregard of it, by the plaintiff and all its other employes associated with him, on every day he was in its service, and then escape liability to him for an injury caused by its own breach of duty towards the plaintiff because he disregarded this rule, would be neither good morals nor good law. Actions are often more effective than words, and it will not do to say that neither the plaintiff nor the jury were authorized to believe from the long-continued acquiescence of the defendant in the disregard of this rule that it had been abandoned,—that it was not in force. The evidence of such abandonment was competent and ample, and the ruling and charge of the court below on this subject were right. *Barry* v. *Railway Co.*, 98 Mo., 62, 11 S. W. Rep. 308; *Smith* v. *Railway Co.*, 18 Fed. Rep. 304; *Schaub* v. *Railway Co.*, (Mo. Sup.) 16 S. W. Rep. 924."

b. The petitioner has conceded that it was under the duty to issue a rule for the guidance of its masters in the navigation of its steamers in fog by actually issuing one.

It produced a copy of the regulation, referred to as Article 395, in an answer to an interrogatory, and stated that this regulation was in force at the time of the collision. Fols. 416, 433.

The regulation, as printed by the petitioner in its answer, is in this form:

"In conformity with the Articles of the International Regulations having for object the prevention of collisions:

'All vessels under steam which approach near enough each other so that there may be a risk of collision, must diminish their speed or stop and go backwards, if necessary. All vessels under steam, must, during foggy weather, preserve a moderate speed.'

"The captain under these circumstances must diminish the speed of his engines, and in agreement with the agent of postes, the captain must make known by proces verbal, the delays which such manoeuvres may have occasioned." Fol. 433.

The district judge based his decision in part on the erroneous assumption that a letter issued by the company in 1884 to a number of its captains, who acknowledged on the margin that they had seen it, was in force, fols. 3,761, 3,762, at the time of the collision. Pp. 968, 969.

There is nothing in the record to show that the letter of 1884 was issued to any of the captains except those who had signed it on the margin; namely, Captains St. Laurent, de Jousselin, Brillouin Traub, Chenais, Prado, Santelli, de Kersabiec, Padel, Frangeul, Guillaume. Fols. 2887, 2890, 2893, 2894. Captain Poirot who had been in the service of the petitioner eight years, had never seen this letter until the date of his examination. Fols. 2905, 2909.

Captain Deloncle had been in the service but

two years. Fol. 1410. His signature is not found on the margin of the letter. Fols. 2887, 2890. He is not connected with it in any way.

This letter is dated December 19, 1884. Fol. 2,890. Mr. de Bocande testified that Art. 395 had been in force for many years prior to that date, fols. 3,072-3,076, and that no instructions similar to those of December 19, 1884, had been issued since that date. Fols. 3,071-3,072. The letter is not referred to in the answer to an interrogatory asking for the text of existing instructions. The answer stated merely that Art. 395 was in force. Fols. 293, 294, 432-435.

The letter of 1884 was not, however, any more clear than Art. 395. It merely said: "That in times of fog an active watch be kept on board the vessels," fol. 2,892; and "that all the prescriptions indicated in the rule as to collisions be strictly observed." Fol. 2,893. Neither this letter nor Art. 395 contained a specific instruction to masters to run at moderate speed in fog.

c. Article 395 was insufficient and misleading.

The Court of Appeals held that Article 395 constituted a reasonable regulation. It said that "possibly if the international rule were not quoted, there might be room for argument that the article lacked explicitness; but with the full text of the international rule incorporated as it is, no captain could be in doubt that the diminution he was directed to make should be such as would conform his speed to the navigation which

the international rule prescribed." Fols. 7,098, 7,099.

We think that this is not the interpretation which a ship master knowing that his company was under a contractual obligation that his ship should maintain an average speed of 15 knots an hour throughout the year would put upon the instruction. If it had been the intent of the instruction that the captain under these circumstances *must diminish the speed of his engines so as to conform to the rule*, it would have been easy to say so. It would have been shorter to say that the captain under these circumstances must preserve a moderate speed. Instead of giving a plain direction to this effect, the instruction put an interpretation on the international rule under which the captains were justified in believing that they would conform to it by "diminishing the speed of the engines," sufficiently to be able to enter "diminished speed" in the logbook, though the speed of the ship might still exceed moderate speed.

The fair construction of this regulation to the mind of any captain would be that, if in time of fog he should "diminish the speed of his engines," he would be doing that which the law requires when it says "go at moderate speed"; and that if he diminished the speed of his engines even to a slight extent he would be complying with the International Rule, as he would be complying with the company's regulation.

Let us suppose that after the collision of the *Touraine* with the *Sully*, in which the petitioner was held liable for the fault of its

steamer in running at 16 knots an hour in a dense fog, pp. 1164-1170, the petitioner had found fault with Capt. Santelli because he had violated *its regulation*. If Santelli's answer had been "I have not violated any regulation of the company, the rule says that I must diminish the speed of my engines, *I had diminished them*," fols. 3486, 3487, the company could not have had any reply to him.

Or let us suppose that the petitioner had undertaken to find fault with him for having violated the International Rule. A complete answer would have been that the company's regulation had instructed him that by lessening the speed of his engines he was acting "*in conformity* with the International Rule," and that if the company did not mean him so to understand, it should have made some other regulation.

Moreover the petitioner had been expressly informed by the decision of the Court against it in the *Touraine* and the *Sully* that merely diminishing the speed of the engine in fog "by some knots from the maximum" was not a compliance with the Rule which requires a moderate speed in fog. Fol. 3487. It was its duty therefore to have made a Rule which would conform to the law as laid down for it.

It would seem that Captain Richard, of France, must have had this very loose regulation of the petitioner in mind when he stated in the Maritime Conference at Washington:

"I fear that they have generally *diminished* by only one or two knots the *speed of the engines* in order to enable them to inscribe in the logbook 'diminished speed.'" Fol. 3,548.

Though the date of the pamphlet which contained Article 305 was 1891, the petitioner's agent testified that it had been in force for 40 years. Fols. 3072-3075. Four collisions had occurred in the eleven years preceding the loss of the *Bourgogne* in which the company received notice from the judgments delivered, that the interpretation their captains had put on the rule was that a reduction of one or two knots an hour constituted obedience to it. Pp. 1116-1170; 1171-1185, 1220-1222; 58 F. R., 427. Yet no change was made in the rule.

It also appears from the evidence that the captains, even after the collisions understood that they were complying with the rule by reducing their speed from 17, to 12 or 13 miles an hour in dense fog. *Fajolle*, fols. 1106-7, 1111, 1112.

The logbooks and the sea reports must have shown that the captains were not running their ships at moderate speed in fog. If the petitioner exercised such a supervision over its servants and the conduct of its business as was necessary in order to know that it was being conducted in accordance with the rules which it had issued, *ante*, pp. 58-61, it must have known that its captains were not putting the interpretation on the regulation which the law required.

d. There is evidence from which it may be inferred that the petitioner did not exercise any care to ascertain whether its own rule relative to navigation in fog was being observed or not.

Mr. Simon, who was for a number of years superintendent at Havre, states that the logbooks were handed in to his office, but that he never read nor examined them. Fol. 1429. He sent them on to the central office in Paris; and there is nothing to show whether they were or were not examined there. Fol. 1421.

The sea reports, it seems, were examined in Paris. Fols. 2961, 2962. It is apparent, however, from the printed form on which they were made, p. 1215, that they could not have given such full details with regard to the whole navigation of the vessel as were contained in the log-books.

The Paris office seems to have given special attention to the sea reports, fols. 2959-2961; but the impression sought to be created was that the logs were ignored except in cases of accidents. Fols. 2961, 2962. It is not to be believed, however, that it was not the duty of anybody to examine the logs. There was no reason for requiring them to be sent to the office of the central administration in Paris, except for examination. But whether they were examined or not the petitioner is chargeable with knowledge of what they contained.

As the proofs stand they do not show either that the petitioner took any pains to inform itself

of the details of the voyages, or of the navigation in fog, or that, if it did make such examinations, it ever made any remonstrance or criticism against the conduct of its captains.

We contend, therefore, first, that the petitioner did not issue reasonably sufficient instructions for the guidance of its captains, and for the protection of its passengers and cargo which it carried; and, furthermore, that it was negligent in failing to ascertain that the instructions which it did issue were not carried out, or, if it did ascertain that fact, in failing to promulgate such further regulations as would have insured the proper and safe navigation of the ships. In the absence of such action on its part, the captains assumed that their practice in navigating the ships at excessive speed in fog was approved, and no doubt it was approved, by the petitioner.

c. The petitioner neglected to compel obedience to the International Rule, and rewarded certain commanders who infringed it.

It appears that in two of the instances in which the French courts found, in collision cases, that the petitioner's steamers had been running at nearly full speed in fog, the Company not only failed to make any criticism on the conduct of its captains, fols. 2814, 2818, but it actually promoted them to higher positions in its service.

The first of these cases was that of *La Bretagne* and *The Tellus*. P. 1171. The court there found that Captain de Jousselin, fol. 3499, in very intense fog, fol. 3502, was navigating, as

appeared from the logs, at very nearly maximum speed. Fol. 3507. The *Bretagne* was held on appeal to be solely to blame. Fols. 3538-3539.

Subsequently Captain de Jousselin was promoted to be "Chef du Service d'Exploitation" [head of the operating service]. Fols. 413, 2786, 2882-3.

The second case was that of the collision between *La Touraine* and *The Sully*. P. 1164. The French Court there found that Captain Santelli, while navigating his ship in thick fog at the rate of 16 1/2 knots an hour, or 509 metres a minute, fols. 3486, 3489, ran into a vessel at anchor, which was showing her regulation light. Fols. 3485. The *Touraine* was held solely to blame. Fols. 3489, 3490. This is the same Santelli who was examined as a witness in this case, and who since the occurrence had been promoted to be "Inspector, Controller" at Havre. Fols. 2801-2.

The learned district judge considered that it was not clear that any further precautions than those established by orders and regulations issued by the petitioner would have been practicable. Fol. 3767. This opinion apparently rests on the ground that the regulations issued were sufficient; but even if that were so, it would not follow that further precautions to enforce obedience to the rule would not have been practicable.

The petitioner had the means of knowing at the end of every voyage whether its regulation had been obeyed or not. If it had not been obeyed, punishment of the disobedient officer by a fine or dismissal would have been a highly practicable

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method of compelling obedience. If, after the collision of the *Bretagne* and the *Celtic*, in 1887, Captain de Jousselin had been punished for disobedience in running his ship at excessive speed in fog instead of being promoted to be chief of the operating service in Paris, fol. 415, and, if after the collision of the *Lorraine* and the *Sully*, Captain Santelli had been compelled to pay a part of the damage caused by his disobedience of the rule, or had been otherwise punished, no one can doubt that the practice of the petitioner's captains in violating the law would have been immediately stopped.

The inference from the petitioner's conduct in these two cases is either that it did not consider the navigation of its captains to have been in violation of its regulations, or, that it did not wish them to comply with the rule, but rather desired them to maintain the average speed of fifteen knots per hour so as to secure the subsidy and any premium thereon that could be earned.

The conclusion on this branch of the case is that the petitioner took no precautions to compel obedience to the rule which it had made, and that even in the instances where courts condemned it to pay large sums of money by reason of the navigation of its vessels at high speed in fog, it not only took no steps to correct the practice, or to issue any additional instructions, fols. 2910, 3071-2, but even rewarded the captains who had been found guilty. The moral effect of such conduct could only have been to encourage other

captains to do everything possible to earn a premium for speed. Fol. 3119.

The Court of Appeals very properly said that "however positive and precise a rule may be, it will not avail the person who has prescribed it if he encourages or sanctions or knowingly tolerates its violation." Fol. 7100. *Railroad Co.* v. *Nickels*, 50 F. R., 718, 722.

We maintain that the evidence, rightly considered, clearly shows the petitioner did encourage, sanction and knowingly tolerate a persistent violation of the rules of navigation, and of the regulation issued by the company, if that regulation can be regarded as a direction to its commanders to conform their navigation to the international rules.

III.

The petitioner, by its contract with the French government concerning the postal service, encouraged its captains to run its vessels at their highest speed in all kinds of weather throughout the year.

This contract under which the petitioner received a subsidy of $1,096,000 a year, fol. 7048, provided for a weekly service between New York and Havre, fol. 6651, in which the steamers should make 52 voyages going and returning each year. Fol. 6658. Each of the steamers was required to have a speed half laden of 17 1-2 knots per hour under forced draught, and was under contract

to maintain a mean average speed of 15 knots per hour throughout the year. Fols. 6681, 6683, 6684. A premium was provided for if any of the vessels exceeded the mean average speed required; and if any one failed to attain that speed the sum which would otherwise be paid to the company was subject to a deduction. Fol. 7024. If a vessel failed for 10 voyages to make an average speed of 15 knots it was subject to be rejected as unfit. Fol. 7026.

The captains knew of this agreement with the government, and the company shared with them the speed premium which it received in respect of their vessels. Fols. 270, 417, 418. The captains were encouraged in this manner to maintain the highest possible speed in all kinds of weather.

All the steamers were understood by the employees of the company to be postal vessels. Fol. 1435. The *Bourgogne* at the time of her loss was operating under the postal contract. Fols. 261, 414, 440, 1352, 1353, 1356, 1384, 3405, 3430.

The most favorable speed of the *Bourgogne* was from 17 to 17 1/2 knots. Fols. 963, 3427. Laden as she was at the time of her loss, her normal full speed was about 16 knots. Fol. 1501.

It is manifest, therefore, that having regard to the delays occasioned by heavy weather and adverse seas, the *Bourgogne* was obliged to run at nearly full speed when the sea was smooth in order to fulfill the contract between the petitioner

and the government. Captain Deloncle fully understood his duty to make quick passages and discharged it. He had a reputation for making fast voyages and arriving on time. Fols. 1720, 2776. His vessel exceeded the required speed under the contract during the time that she was in service in the year which closed July 22, 1898. Fol. 415. If the captain had survived he would have received a portion of the premium for speed. Fol. 418.

There is nothing to indicate that the load which the *Bourgogne* carried on this voyage was unusual in any particular. With it her full speed was about 16 knots. On the day prior to the collision, in clear weather she had made 375 miles, fols. 1640, 1502, which represents an average speed of 15 3/5 knots per hour. With adverse seas she might easily have fallen below 15 knots.

The requirements of speed which the company imposed on its masters on account of its contract with the government left them but a slight margin for adverse conditions. A reduction of the speed to 6 knots an hour during a considerable period of fog could not be thought of by the master as a manœuvre possible for him to make without violating the contract of his owner with the government.

Moreover the bait of a share in the speed premium presented a constant temptation to the captains to subordinate everything to speed.

The Court of Appeals was in error therefore, in saying that the company did not "encourage" its masters to run the steamers at immoderate speed in fog. Fol. 7118. The contract encouraged them, if it did not impose a duty on them to do so. And that which they were encouraged to do, they regularly did.

IV.

The steamers of the petitioner's line were habitually run at excessive speed in fog.

It seems obvious that the petitioner's managing officers must have known, as practical men, that a sixteen or seventeen knot steamer could not maintain a mean average speed of 15 knots an hour in all kinds of weather throughout the year without going at substantially her full speed all the time.

It is a matter of public knowledge that the fast passenger steamers of all the principal transatlantic lines are customarily run at very high speed in fog. The petitioner must have known what the travelling public knew.

The learned district judge said that "perhaps the court should take judicial notice of the almost universal practice of running ocean liners at excessive speed in fogs." Fol. 3766.

The Court of Appeals stated that there was "a wide-spread impression that the various Atlantic liners, which seek for and obtain the patronage of the traveling public by means of the quick pas-

sages they make, are able to make such passages only by running at excessive speed in a fog." Fol. 7101. The proofs, which we purpose now to review, should have led the Court to conclude that such was the practice of this line.

1. The courts have referred in other cases to the custom of running passenger ships at excessive speed in fog.

In *The Columbian*, 91 F. R., 801, where a steamer was found to have been going 9 or 10 knots in a fog, Lowell *J.*, at p. 802, said:

"Had the steamer been an ocean liner instead of a freight steamer, it would probably have been sent through the same fog at from 15 to 20 miles an hour, and its captain would have been blamed by his company as well as by his passengers if he had loitered at half-speed. Though this almost universal practice may relieve the captain of the steamer from moral blame, the captain was none the less a trangressor of the international rule."

And on appeal in the same case, 100 F. R., 991 at p. 992, Judge Putnam said:

"The frequent condemnation by the courts of excessive speed in fogs has not broken up what is described in the *Umbria*, 166 U. S., 409, as a 'custom,' which 'implies a flagrant disregard of the safety of other vessels.'"

Other recent cases in which passenger steamers have been held to blame for high speed in fog are *The Saale*, 63 F. R., 478, *The Trave*, 68 F. R., 390, *The Campania*, [1901] Prob. 289; 9 Asp. Mar. Law. Cas., 151, 177; *The Oceanic*, 9 *do.* 378; *La Normandie*, 58 F. R., 427.

2. The practice of running at immoderate speed in fog was commented on with great frankness by the delegates to the International Marine Conference at Washington, in 1889, which revised the International Rules for the Prevention of Collisions at Sea.

Dr. Sieveking, a delegate from Germany, who is an eminent judge, there said:

"In fact, I think it may be said that in general the principle of our fast steamers in plying the ocean is that in thick weather they are to go at as fast a speed as they can." *Protocols of Proceedings of the International Marine Conference,* Vol. 1, p. 94, *Record,* fol.3,544.

Captain Mensing, another delegate from Germany, said:

"I do not believe that there is any captain afloat who would like to go at full speed in a fog; but ships are built of which the public and the owners and the world expect speed. They expect them to go fast. Now, what are these ships going to do? * * * If there is any law or any company that has given an order to their captains to go at a speed which is just sufficient to keep steerage way, I would like to hear of it. I refer now to some researches which have been going on in Great Britain by the Royal Society of Arts. These men have taken the trouble of having before them a large number of English shipping captains and English firms, giving to them the promise at the same time that they would not publish their names and asking them to give the results of their experience. So far as I know the overwhelming number of these ship-owners, mas-

ters and captains have said that ships were going at full speed—that is to say, practically at full speed." Id. p. 96, fols. 3545, 3546.

The late Justice Goodrich, a delegate from the United States, said:

"I know, and every man who crosses the Atlantic knows, that they ride through a fog at full speed." Id., p. 98; fol. 3,547.

Captain Richard, delegate from France, said:

"We have among us in this conference a considerable number of captains of the merchant navy who have commanded vessels renowned for their speed. Let them tell us how they have understood the expression "moderate speed in fog'. * * * Let them explain what moderation they have made under the conditions provided for by Article 13 in the engines of those vessels. What was the reduction of speed in knots? I fear that they have generally diminished by only one or two knots the speed of the engines, in order to enable them to inscribe in the logbook 'diminished speed.' It must be taken into account, *and the more so as the habit has become a practice*, notwithstanding Article 13 and the expression 'moderate speed.' " Id., 147; fol. 3548.

Captain Richard further said:

"In all countries where these questions of fog and snow have been a matter of study, what had been the instructions given to the military navies? * * * In our navy we must not exceed six knots. Moreover, these infractions occur, but they are not met with in France alone. To judge by the duration of sea voyages, vessels which

leave Liverpool and Hamburg to cross the Atlantic must also be accused thereof. All navigate, I think, in the same manner." Id., p. 447; fol. 3,552.

Mr. Flood, delegate from Norway, said:

"The greatest danger of navigation I know of is during a heavy fog to fall in with one of the ocean racers, or greyhounds, as they are fitly called, who recklessly, with full speed (or even with what they call moderate speed, one or two knots less per hour, or a few insignificant revolutions less per minute), traverse the ocean under the well known system that has got its rather cutting characteristic in the following expression, said to have come from the bridge of one of those crack steamers: 'Heaven, hell, or New York in seven days, is my order.'" Id., p. 425; fol. 3,549.

The proceedings of the conference are printed at the Government printing office, and promulgated by the Government. The offer of extracts from them, by reading from the published report, fol. 1731-1734; 3544-3553, was correct. *Greenleaf on Evidence* §452; *Kirby* v. *Lewis*, 39 F. R., p. 77. The proceedings may be referred to as bearing on the custom. *Radcliff* v. *Ins. Co.*, 7 Johns., 38; *Bryan* v. *Forsyth*, 19 How., p. 338.

3. The "wide spread impression" that the various Atlantic liners, which seek for and obtain the patronage of the traveling public by means of their quick passages, are able to make such passages only by running at excessive speed

in fog, fol. 7,101, was proved, by a clear preponderance of proof, to be the actual practice of the petitioner's steamers, including the *Bourgogne*.

Herbert Peeters, who had served as deck steward and second steward in the petitioner's service for about twelve years and six months, had made 88 voyages altogether on the steamships *Gascogne*, *Bourgogne* and *Navarre*. Fol. 1711. His service began in August, 1886. Fol. 1,734. Twelve years and six months from that date would be January, 1899, *not* 1889, as the Court of Appeals erroneously states, fol. 7104, and as his testimony is erroneously transcribed in the record. Fol. 1,734. In 6 or 7 out of every 10 voyages the weather was foggy. Fol. 1,712. In reply to the question, "What was the practice on those steamers as to the speed of vessels during those periods of fog," fol. 1,712, the witness answered, "To make always regular time, because the ships are to get in on Sunday, fog or not." Fol. 1,714.

"Q. You don't quite answer the question as to the speed during the times of fog. A. They never slowed down; in mid-ocean they went full speed, but in the English Channel the speed was now and then reduced to sound." Fol. 1714.

The witness said he had also served on the Hamburg Line and the Red Star Line from Antwerp. Fols. 1,715 1,716.

"Q. What do you say as to the practice on

those lines? A. I have always seen the same thing; I have always seen in mid-ocean when it was foggy going full speed to make the time. When the ships come in, you notice they make regular time, and even better time in fog, because when it is foggy it is smooth water; they make better time in fog than they do in bad weather." Fols. 1,716-1,717.

Speaking of the master of the *Bourgogne*, Peeters said:

"Capt. Deloncle was a very smart man; he made very quick trips; he had the reputation of making the finest trips out; he had the reputation of making very quick voyages; that is the reason he was pushing along the *Bourgogne*." Fol. 1720; to the same effect, *West*, fol. 2775.

Cross-examined as to the rule governing speed in fog, the witness said:

"I couldn't tell; I suppose they ought to slow down; they ought to slow down, but they never do.

"Q. Do you mean to say that the steamers of the French Line never slow down? A. Not in mid-ocean, sir." Fol. 1,725.

"Q. Don't you know that the rule of law is, or the rule of navigation is, that the speed of a ship in fog shall be moderate? A. Yes, sir; but they don't do it." Fol. 1,726.

"Q. Don't you know that the rule is that a vessel may navigate in a fog under conditions of speed that will enable her to stop and avoid a vessel as soon as she can be seen? A. I mean to say that when there is two or three days under thick fog a ship ought to go half speed or three-

quarter speed. She could never do her proper time; she could never get in port in her proper time—and they generally do; they generally get in port in good time; they never delay." Fols. 1,728, 1,729.

"Q. Do you mean to testify that in these instances to which you have referred that the vessels of this company were going at a speed in excess of that requirement that I have just mentioned? A. Yes, they do; not only the French Line, but I say all the lines do it." Fols. 1,729-1,730.

Edouard Lavanneux, a flour merchant, of New York, fol. 1748, had made about 70 trips between 1873 and 1893, and had crossed on all the steamers, fol. 1756, including the five new ones, the *Bretagne*, *Gascogne*, *Bourgogne*, *Touraine*, and *Normandie*, between 1886 and 1893. In the latter year he crossed on the *Bourgogne*. Fol. 1749. He stated that in his experience, both on the *Bourgogne* and on the other vessels, it was the practice to go at full speed in fog. While crossing on the *Bourgogne* fog was experienced, but the speed of the ship was not diminished. He examined the daily runs as posted. There was no diminution of speed on account of the fog. Fols. 1,750-1,754. He had also experienced fog on board the other vessels. He had examined the daily reports of the runs on the other vessels as well. There was no diminution of their speed on account of fog. Fol. 1,754.

On cross-examination he said:

"Q. You don't know the speed which vessels

are allowed to run in fog, do you? A. From what I have read in the papers and from their log I always took it for granted those steamers run about 16 or 17 knots from the average run of 400 miles and more." Fols. 1,759, 1,760.

Emil Baruch, a New York merchant, testified that he had crossed most every year since 1895, meaning apparently from that time until the date of the trial, 1901. He had traveled both ways on the line, and had crossed on the *Bourgogne, Champagne, Touraine,* and *L'Aquitaine.* Fols. 1,762, 1,763. He testified:

"Q. Have you during those voyages or any of them had periods of fog? A. Yes, sir.

Q. How long were they, about? A. Sometimes three and sometimes four days.

Q. Have you noticed during that time as to whether there was any slowing of the speed of the steamer during the fog? A. No, sir; no slowing down." Fol. 1763.

He stated:

"When you travel on a steamer a certain amount of time, you feel the machinery exactly like your blood beating." He added that slowing down is immediately noticed and felt. Fol. 1764.

He further stated that the time of arrival at the end of the voyage was the same, whether there was fog or not. Fol. 1,765.

Abraham B. Riker, a merchant, of New York, testified that he had crossed 12 or 15 times on the French Line, and since 1889 had made about two trips a year. He had traveled on the *Bretagne, Gascogne, Normandie, Champagne,* and *Touraine.*

He had generally experienced fog for from 12 to 24 or 36 hours on his voyages. Fol. 1767.

"Q. Have you noticed anything with reference to any lessening of the speed of the steamers during that foggy time? A. No, sir; I never noticed any.

Q. You never saw any lessening? A. I never noticed any lessening of the speed during that time.

Q. Did you keep knowledge of the runs that the ship made during the day? A. During each voyage; yes, sir; from the log.

Q. What do you say as to whether those runs indicated any lessening of speed during the times of fog? A. To my best impression I don't think there was any difference; I could never see any difference at least." Fols. 1,769, 1,770.

The witness stated that he had traveled on other lines. And as to their practice testified:

"Q. What do you say as to the usage about speed in fog on the other lines? A. I never noticed particularly much difference, although the impression is that some of the English lines showed a little more precaution than this line; it was generally the impression of the old travelers on the French Line that the French Line didn't show the same precautions in regard to fog that the other lines did." Fols. 1,771, 1,772.

The witness was alarmed at the speed of the *Touraine* in fog on one occasion, when she was running at full speed among fishing boats, which could be seen at intervals when the fog lifted. Fols. 1,774, 1,775.

James W. Burras, a salesman, of New York, who had crossed on the French Line usually twice a year for 16 or 18 years, and had been a passenger on the *Normandie, Bourgogne, Bretagne, Champagne* and *Gascogne*, fol. 3,128, said:

"Q. Have you ever on those voyages had occasions of fog? A. Many times.

Q. What, if anything, have you noticed with reference to the speed or any change of speed of the steamers during periods of fog? A. I never noticed any change of any kind, either by report or my own observation.

Q. Did you, on those voyages, see the runs of the vessels on the different days posted up? A. Yes, sir.

Q. Were those runs diminished by a period of fog? A. They didn't seem to be. Fol. 3130.

Q. How about the arrival at the port of destination? A. Usually about on time, with the exception of some head winds or a storm or something to delay them; they usually come in about on time." Fol. 3,131.

"Q. What attention, if any, did you pay to the question of speed in a fog? A. Being interested in the pool, usually I would look it up." Fol. 3,131.

Felicie F. Steiner, of New York, had crossed six times on the French Line. On one of the voyages, on the *Aquitaine*, "we met a very very thick fog from the minute we left the harbor until we arrived in Havre." Fol. 1,808. With regard to speed during fog, she said:

"All I can say is that we made about the same speed; because the record was the same as the day before, when it was clear." Fol. 1,808.

The fog was so thick "that at times you couldn't see your hands before your face." Fol. 1,813.

"Q. Do you know that in this fog the speed was not diminished? A. I know that the day of that fog we had—the time I was up, from 9 in the morning till 8 in the evening, we had fog, during the night I know nothing of; at the end of the day we had run the same amount of miles as the day before, which had been quite clear and beautiful." Fol. 1,813.

4. The petitioners evidence did not show that its vessels were exceptions to the general rule, and were customarily run at moderate speed in fog.

The *Bourgogne's* own testimony strongly tended to establish the principal ground on which the claimants felt that the petitioner was in privity with and had knowledge of the dangerous kind of navigation which resulted in the loss of the *Bourgogne*.

Judge Brown, fol. 397, and the Court of Appeals, fols. 7,099, 7,100 agree that a practice of running at high speed in fog, if known to the petitioner, would put it in privity with the loss.

The claimants direct evidence on the subject shows that the Court might very well take judicial notice of the almost universal practice of running ocean liners at excessive speed in fog, as suggested by Judge Townsend, fol. 3,766, and that what the Court of Appeals calls a "wide-spread impression," fol. 7,100, is a fact. It also showed that the testimony of the delegates to the Inter-

national Marine Congress in regard to the general practice, was true of the petitioner's line.

The circumstances were such as to place a strong burden on the petitioner to show that the "wide spread impression" was untrue, if it could do so, by producing the best evidence which it had in its possession and under its control, to prove either that the practice of running at excessive speed in fog was not indulged in by its steamers or that, if there was such a practice, it had no knowledge of it, or had taken steps to prevent it.

If there was no such practice on the petitioner's steamers it had the means of showing the fact by producing its log books and sea reports, as it was notified to do by claimant's counsel, fols. 1736, 3576-3578, and was directed to do by an order of the court. Fol. 510. It might also have produced the *procés verbal,* in which, by Article 395, the captains were bound to set forth the delays due to fog, if there was any such delay. It refused to produce anything under the notice of the claimant's counsel, fols. 1817, 1818, and failed without legal excuse to produce the log books which it had been directed by the court to produce. Fols. 1404-05; *post,* pp. 117-130. The feeble excuse contained in the letter which was smuggled into the record, fols. 2,963-6, 3,631-4, after the court had excluded it, fols. 1,405, 1,423-1,426, is worse than none, for, though utterly insufficient, it in-

dicates that the petitioner was conscious that some excuse was called for.

The petitioner had the further means of showing that no such practice existed on its steamers by the evidence of the captains, engineers, or other members of the ships' crews, that were in its service. If there was no such practice the evidence which it might readily have produced from its officers and crews would have been overwhelming. It did not call a single captain to prove that any of its steamers had ever run at moderate speed in fog. It examined two assistant engineers, Laisné, p. 485, Labourch, p. 746, the boatswain, p. 1000, the helmsman, p. 418, and a large number of members of the crew, but did not seek to prove by any of them, unless by Laisné, that its vessels were accustomed to go at moderate speed in fog—though nearly all its witnesses were examined or recalled after the claimants had furnished their proof on this point. Laisné's evidence was an eleventh-hour thought, and proves nothing definite. He says the ships on which he sailed "slowed down" in fog, but did not say how much. Fols. 2640-2648. He was sorry he had lost his memorandum book and therefore could not give details. Fol. 2648. He did say, however, that "the steamers arrive at a regular hour in Havre" and that "we have to go at full speed *all the time*" in order not to miss the tide. Fol. 2643.

The petitioner's only evidence on the subject

was contained in the testimony of four passengers.

Felsenberg, a commission merchant, fol. 2,661, had made three crossings by the French Line, fol. 2,663, one on the *Touraine*, one on the *Bourgogne*, and one on the *Champagne*. Fols. 2,663-2,675. He had crossed on the *Bourgogne* from New York to Havre in May, 1898, the last voyage before she foundered. Fol. 2,675. He states that two days of fog were experienced near the Banks, and that when he was on deck he "found that we were not going so fast as usual." Fol. 2,665. He did not, however, notice anything in connection with the distance run during the foggy days. Fol. 2,666. He did not remember whether the steamer made the same number of miles per day in foggy weather as in clear, but added, "I don't think they ran so quick in foggy weather." Fol. 2,667. "When the weather was dark or foggy the speed affecting the number of knots was not so large as when the weather was clear." Fol. 2,667.

On cross-examination he stated that on the last voyage on which he crossed on the *Bourgogne* the steamer sailed from New York on Saturday, but was detained off Staten Island until 5 o'clock P. M. for a favorable tide on which to pass through the torpedo fields in the harbor, fol. 2,679, and did not pass Sandy Hook until 7 o'clock P. M. Fol. 2,680. "We had about 2 days fog, thick fog." Fol. 2,665. The steamer arrived at Havre on Sunday morning, at about 6 o'clock. Fols. 2,676, 2,677; *cf.* 2,776.

The length of the voyage was thus 7 1/2 days, or, allowing 6 hours for time gained going eastward, 7 days and 6 hours, or 174 hours. Taking the distance as given in the government contract, at 3,130 knots, fol. 6,658, the steamer made an average speed for the voyage of about 17 1/2 knots, which was her greatest speed. If the captain saved 100 miles by taking the extreme northerly course, his average speed would still have been 17 knots.

It is thus seen that the evidence of this witness, on which the court below relied, fol. 7,109, as tending to show that the petitioner reduced the speed of its steamers during fog, really proved that the *Bourgogne* went on her previous voyage at full speed in fog.

Pagnon, another passenger who was employed in a silk importing house in New York, had crossed more than 60 times on the French Line, and 10 or 12 years before had crossed once on the *Bourgogne*. Fols. 2,697, 2,699. He stated: "I have seen very often, not to say always, a reduction of speed in case of dense fog. Sometimes I counted myself the revolutions of the engine." "With the screw steamers very often I have seen —I can be a witness to it—a sensible reduction; 15 to 20 revolutions as far as I can remember." Fols. 2,700, 2,701.

The sensible reduction of speed to which he referred was a reduction of what he called 20 per cent. Taking the revolutions, as he did, at 70 a minute, fol. 2,713, this would have meant a reduction to 56. Fol. 2,713. The pitch of the pro-

peller was 10 metres or 32 1/2 feet, fol. 2,941, so that 56 revolutions, if there had been no slip, would have propelled the ship 109,200 feet per hour, or at the rate of 18 knots. It is agreed that the slip of the propeller was 10 per cent. fol. 2941; deducting this percentage, the distance traversed would be 98,280 feet per hour, which would be equal to 15 1/2 knots. The full number of revolutions of the *Bourgogne* at top speed was 63. A reduction of 15 revolutions would leave her running at 49, and a reduction of 20 would leave her running at 43. At 49 revolutions the steamer would have made, deducting 10 per cent. for slip, a speed of 14 1/6 knots per hour and at 43 revolutions, she would have made a speed of 12 1/2 knots.

The evidence of this witness does not, therefore, establish a "sensible reduction" of speed within the meaning of the regulation which calls for moderate speed. Moreover, his testimony as to the reduction of the revolutions is apparently based on hearsay. In answer to the question as to what the rate of the strokes of the engine had been on the present style of steamers, the witness stated that he could not swear to that, but when he was on board the steamers he knew it very well "because I said, 'how many revolutions are you going?' and I would get the answer." Fol. 2,712.

Benson, another agent for a French silk house, had made 56 crossings on the French Line. Fols. 2,732-2,745. He stated that, "I certainly have

several times gone to look at the indicator in dense fog and found that the speed had been reduced in the fog." Fol. 2,733. "It was because I thought that there were a fewer number of the revolutions that I went to look at this indicator." Fol. 2,734. He stated that the indicator was very often at half speed, [which gives 12 or 13 knots, fols. 1,101, 1,105], or even lower than that, down to what they call slow; he could not tell how the engines were going at that time, but could tell that there were fewer revolutions if the machinery were reduced 10 revolutions a minute. Fol. 2734. On such occasions there had been a decided difference in the number of miles run per day as shown by the card posted in the gang-way, but he could not tell the extent of the difference in miles, and could not remember any particular instances. Fols. 2734, 2725. He had crossed 3 times on the *Bourgogne*, fols. 2,738, 2,739, and had crossed once with Captain Deloncle on the *Normandie*. Fol. 2,740.

The witness stated that the number of turns of the engines which would give full speed was 60, as far as he could remember, on the four steamers that ran together, the *Bourgogne*, *Champagne*, *Bretagne*, and *Gascogne*. He got that knowledge from his own counting of the turns, and stated that this was the average at full speed. Fol. 2, 748. He stated that he counted less than 60 turns "several times" during fog. Fols. 2,748, 2,749. He could not say that he had ever noticed a diminition of more than 10 revolutions per minute. Fol. 2,750.

Counsel for the petitioner was not satisfied with the testimony of the witness about the reduction of the number of revolutions, and on re-direct examination asked him:

"Q. You said in answer to a question by counsel on the other side that you couldn't remember definitely the reductions of revolutions in cases of fog. Now, without being definite, give me your general impressions of the extent of those reductions. A. I should say—no, I can't be exactly sure—but I should say 10 or 12 revolutions." Fol. 2,759.

The testimony of the witness concluded with the following questions on re-cross examination:

"Q. You said that your impression was that the reduction would be 10 to 12 revolutions, as I understand, about that? A. That is my impression exactly.

Q. And they would be about that, whether the indicator stood at slow or half speed, the same? A. I should imagine—no, half speed that would be, I should say, as far as my memory serves me.

Q. You should say that, if the indicator stood at half speed, that would correspond with the diminution of about 10 or 12 revolutions? A. Yes." Fol. 2761.

This would be a reduction of between 2 and 3 knots per hour, figured on the pitch and slip of the propeller. Fol. 2941.

Metz, an importer, had made one passage in the *Bourgogne*—during May, 1898. Fol. 2948. Fog was experienced on several occasions. He men-

tioned one instance in which during fog he noticed that the steamer was going at a slow rate. Fol. 2,949. In that instance the fog lasted about half an hour, and the witness was in the smoking room all the time that the fog lasted. Fol. 2,954-2,955. He said he could feel that the ship was going slow. Fol. 2950. It is apparent, however, that his evidence is not based on any actual observation, but is merely an inference. Moreover the steamer, it appears, arrived on time, early Sunday morning. Fol. 2951; see also *West*, fol. 2776.

In this review we have endeavored to give the substance of all the testimony by the passengers called on both sides with reference to the custom of running at high speed in fog. The claimants' six witnesses testified to 223 trips; the four witnesses of petitioner to 120 trips. The testimony of the petitioner does not in effect contradict that of the claimants, for the petitioner's witnesses do not suggest that the ships on which they crossed were navigated, in practice, at *moderate* speed in fog.

It must be manifest to anybody who will be at the pains to read the testimony that the great preponderance of the evidence is in favor of the claimants on this point. The evidence of the petitioner is of the slightest possible value to it, and, when carefully analyzed, it possesses little or no real weight. When it is considered that this kind of evidence is offered by a petitioner which had in its possession decisive

proofs on the point, one way or the other, in the log books of its steamers, it seems trivial.

The only other evidence of the petitioner on this subject is found in the cross examinations of its captains, Santelli, Poirot and Fajolle, who were called by the claimants. These are the witnesses who refused to submit their log books for examination, though duly subpœnaed to produce them. *Post*, pp. 108-117. The conduct of the witnesses and the tenor of their testimony do not commend them to the benevolent consideration of the court.

The attitude of Captain Santelli was obstructive. He would say, "I am searching through my brains to find out what this question means," fol. 2816; and when he saw the bearing of it, would decline to answer, or answer so as to give no information. His view of the proceeding was this:

"The witness, addressing petitioner's counsel: If you wish me to make any special answer you must tell me so"! Fol. 2,808.

On the cross examination of this witness, petitioner's counsel asked him whether it was a fact that the company's steamers were in the habit of running *at full speed* in a fog at sea. The witness answered, No, fol. 2858, but later stated that he could only say what *he* did, and that he did not know what the other captains did. Fol. 2,870. If by his first answer he meant to say that he was not in the habit of running at high speed in fog, his evidence was weakened by the fact that he was in command of the *Touraine* when she

sunk the *Sully*, and was held in fault for running at 16 knots in a dense fog. Fol. 3,479. The case of the *Sully* was put to him on re-direct examination by claimants' counsel, and he was asked.

"Q. Do you deny that you ran at full speed in that fog?" to which he answered: "I will not answer that question." Fol. 2869.

And later on, on the same subject he said:

"If it has been shown that even that once I didn't execute the rule, that don't prove that I have broken it again." Fol. 2871.

When asked if he had not repeatedly run his vessels as he was running the *Touraine* when she collided with the *Sully*, he at first answered that he did not understand the question, fol. 2,871, and when it was repeated to him the second time, he said: "No, I don't think I did, because it was my duty not to do it and I think I didn't do it." Fol. 2871, 2872.

The evasions and prevarications of this witness on this subject are such as to deprive his testimony of all credit. Fols. 2,858-2,860; 2,868-2,877; 2,896-2,900.

Captain Poirot testified on cross-examination by the petitioner's counsel:

"Q. It has been said in this case that it is the habit of the captains of the company to run their ships *at full speed* in a fog at sea. State what you know about that, if anything. A. I don't know

anything about it, but I don't believe it.

Q. What has been your course of conduct with respect to that mode of navigation? A. I slow down always when there is fog." Fols. 2,905, 2,906.

He said he understood the rule of the company to be, "we are to diminish our speed according to the intensity of the fog." Fols. 2,906, 2,907.

The witness had been in command of the *Bourgogne* and had testified on a previous occasion that the lowest rate of speed which would give her steerage way without current was 8 or 9 knots. Fol. 2,914. She could not go at moderate speed without stopping. *Cf. The Campania* [1901] Prob. 289.

The other captain, Fajolle, refused to produce his log, fol. 1,060, but testified that in thick fog he diminished the speed of his steamer to half speed. Fols. 1,100, 1,101. What he called half speed was 12 or 13 knots, fols. 1,105, 1,107, and this, in his opinion, constitutes moderate speed in fog within the meaning of the international regulations. Fols. 1,111, 1,112.

Petitioner's counsel did not ask the captains what their usual rate of speed in fog was, or whether it was moderate, in the sense of the rule; but contented himself with a denial from the witnesses that the steamers went at *full* speed in fog.

It is impossible to read the proceedings on the examination of these three captains without being satisfied that, even after the loss of the *Bourgogne*, the petitioner's captains were navigating

their steamers at immoderate speed in fog, and that the log books, which were deliberately and by the advice of the petitioner's counsel withheld from examination, would have shown it. It is to be presumed from the refusal to produce their logs that the logs would have shown the practice of running at high speed in fog, and would have corroborated the claimants' other testimony on that point. *Post*, p. 117.

It seems incredible that the court could have accepted the testimony of these three recalcitrant captains as controverting, or tending to controvert, the claimants' proof that the petitioner's steamers were accustomed to navigate at immoderate speed in fog.

The conclusion to be derived from the foregoing careful review of the testimony is that the preponderance of it clearly shows that the petitioner's steamers are customarily navigated just as the *Bourgogne* was, at the time of her loss,—at nearly, if not quite full speed in fog.

V.

Knowledge of the practice of its steamers to run at immoderate speed in fog had been brought home to the petitioner.

It is too strong a draft on credulity to be asked to believe that the petitioner did not know of this practice in the navigation of its vessels during fog. Its managers could not have conducted the

business properly or intelligently without knowing it.

1. The fact had been brought to its attention in three instances during the eleven years preceding the loss of the *Bourgogne*, when its steamers, which had been in collision with other vessels in fog at sea, had been held liable because they were going at excessive speed, viz: in *The Bretagne* and *The Tellus*, May 7, 1887, reported as *Thorbjorsen* v. *Compagnie Generale Transatlantique*, p. 1,171; affirmed in the Court of Appeals of Rouen, p. 1,179, in which the company had been condemned to pay the sum of Fr. 82,000, fol. 3,538; in *The Normandie* and *The Charlotte Webb*, May 18, 1889, 58 F. R., 427, in which the petitioner's steamer was held solely to blame; in *The Touraine* and *The Sully*, September 10, 1894, p. 1,164, where the petitioner had to pay the value of the *Sully* and of her cargo, the price of her provisions, the wages and indemnities of the captain and crew, and interest. Fol. 3,490.

In the case of the *Bretagne* and the *Tellus* the court found that at the time of the collision the fog was "very intense," fol. 3,502, and that "in spite of the fog the steamer had in no way slowed her speed and was navigating at very near her maximum of speed." Fols. 3,506-3507. The Appellate Court approved this finding. Fol. 3,524.

In the case of *The Touraine* and *The Sully* it was found that the collision occurred "in an in-

tense fog," fol. 3,480, and that the *Touraine* "was going at a speed of sixteen knots and five-tenths." Fol. 3,486.

In the case of *The Normandie* and *The Charlotte Webb* it was found that the steamer at the time of the collision was running in thick fog at the rate of 10 to 11 knots.

In all these cases the vessels that were hit by petitioner's steamers were sunk and totally lost.

The Court of Appeals referred to these previous collisions of the petitioner, and said:

"These three detached cases are not especially important, and they lose all persuasiveness when it is seen that subsequent to the last of them there are only two reported cases when steamers of the petitioner's line were in collision with other vessels in a fog, and in both cases the courts held petitioner's vessels to be going at moderate speed and free from fault. *La Bourgogne* with the *Ailsa,* February 29, 1896, 86 F. R., 475; *La Champagne* with the *Ville de Rio,* July 4, 1898," Fol. 7103.

a. The statement of the Court, that the previous collisions that arose by reason of the navigation of the petitioner's steamers at immoderate speed in fog were "not important," fails to attach the right significance to the occurrences.

These accidents were important first, because they show either that the rule which the petitioner

had promulgated for the guidance of its captains in navigating their steamers in fog was insufficient in terms, or, if it be deemed to be sufficient, that it was being disobeyed; and, secondly, because they show that the petitioner had knowledge from time to time of the improper methods of navigation followed by their captains, and did not to take any steps to stop them.

In *The George W. Roby,* C. A., 111 Fed. Rep., 601, it was claimed that the owners should be deprived of the benefit of the Limited Liability Act because the vessel was not provided with a lookout. The Court held that in that case the absence of a lookout was the neglect of the master, and not of the owner, but Lurton, *C. J.,* at p. 614, said:

"A case might be made against the owners if it was shown that they were privy to such an act of negligence, or that they knew that the master was in the practice of keeping no lookout, or of requiring other duties inconsistent with the watchfulness and undivided vigilance constantly due from a lookout."

In *District of Columbia* v. *Armes,* 107 U. S., 519, the plaintiff who sued to recover damages for injuries received from a fall caused by a defective sidewalk offered evidence for the purpose of showing the condition of the street that a number of other persons had fallen and been injured at the same place. It was held that the evidence was admissible. Mr. Justice Field at p. 525 said:

"The frequency of accidents at this particular place would seem to be good evidence of its dangerous character,—at least it is some evidence to that effect * * * Besides this, as publicity was necessarily given to the accidents, they also tended to show that the dangerous character of the locality was *brought to the attention of the city authorities.*"

In *Chicago* v. *Powers*, 42 Ill., 169, the personal representative of a person who in the night stepped off an approach to a bridge while it was swinging round to enable a vessel to pass, and was drowned in consequence, as it was alleged, of the neglect of the city to furnish sufficient lights to enable a person to avoid such danger, it was held that it was competent for the plaintiff to prove that another person had met with a similar accident under the same circumstances.

The Court said:

"If another person had met with a similar fate at the same place and from a like cause, it would tend to show a knowledge on the part of the city that there was inattention on the part of their agents having charge of the bridge and that they had failed to provide proper means for the protection of persons crossing on the bridge."

A similar ruling was made in the case of *Quinlan* v. *City of Utica*, 11 Hun. 217; 74 N. Y., 603.

These cases with a number of others to the same effect were cited by this Court with approval in *District of Columbia* v. *Armes*, *supra*, at pp. 525, 526.

In *Carpenter* v. *Boston, &c., R. R.*, 97 N. Y.,

949, a passenger who was standing on a station platform was struck by a mail bag that had been thrown off a moving train by a mail agent, not its servant. The plaintiff sought to hold the railroad, because it knew of the practice, and had not taken steps to stop it. The Court found that the mail bag had been thrown off in a similar way on previous occasions, that the company was thus chargeable with notice that it might be done again, and as it had not done any thing to stop the practice, it was negligent and liable to the plaintiff for his injury.

An exactly similar case was *Snow* v. *Fitchburg R. R.*, 136 Mass., 522. The Massachusetts Court laid down the law in the same way as to notice to the company, its duty to stop the practice, and liability for its failure to do so.

Another similar case was *Galloway* v. *Chic., &c., R. R.*, 56 Minn., 346. The Court found that the practice of throwing mail bags on the platform before the train stopped had been so frequent and long continued as to charge the defendant with notice of it, and that the defendant had never made an attempt to stop it; and that on these facts, as the practice was a dangerous one, "the defendant was guilty of negligence, which was the proximate cause of the plaintiff's injuries."

The same rule was laid down in Michigan in the case of *Shaw* v. *The Chic. R. R.*, 49 Lawyers' Rep.. Annotated, p. 308, in which the Court said:

"The railroad company is not primarily liable for the negligence of the mail agent, but it owes

the duty of not permitting dangerous habits of the agent in delivering heavy packages from the car in such manner as to endanger persons lawfully on its premises to continue, and *evidence of such a practice continued for a considerable period is notice to the company.*"

To the same effect: Cases cited, *ante*, pp. 57-61

In *Martin* v. *Webb*, 110 U. S., pp. 7, 14, this Court held that a course of conduct of a cashier of a bank may be presumed to have been carried on in conformity with instruction received from those who have the right to control its operations. The Court said:

"Directors of a Bank cannot, in justice to those who deal with the bank, shut their eyes to what is going on around them. It is their duty to use ordinary diligence in ascertaining the condition of its business and to exercise reasonable control and supervision of its officers. They have something more to do than from time to time to elect the officers of a bank and to make declaration of dividends. That which they ought by proper diligence to have known as to the *general course of business in the bank, they may be presumed to have known.*"

If it is to be presumed that the conduct of a cashier of a bank, continued for a considerable period of time, is carried on with the privity of his directors, the presumption must be as strong in the case of captains of a steamship company operating under the direction of the company and reporting their conduct at the end of every voyage.

b. The Court erred further in saying that the previous cases are not persuasive.

The ground of this observation was the finding of the court that in two later cases of collision in fog the petitioner's steamers had not been charged with fault. The Court referred to the cases of the *Champagne* and a previous collision of the *Bourgogne*. Fols. 7103, 7104. But one of these was not later.

The case of the *Champagne* and the *Ville de Rio* did not occur on "July 4, 1898," as stated by the Court. Fol. 7104. July 4, 1898, was the date of the collision of the *Bourgogne* and the *Cromartyshire*. The date of the collision of the *Champagne* and the *Ville de Rio* is not given in the record, pp. 1,220, 1,221, but the counsel for the petitioner, in offering the judgment in evidence, stated that "it was reported in volume 3 of the *Revue International du Droit Maritime* for 1887, 1888, p. 543. Fol. 2981. It appears from this fact that the collision occurred long *prior* to instead of subsequently to the other cases.

An examination of the judgment in that case, does not disclose a kind of navigation in fog to which the petitioner can point with pride though a benevolent court excused it. The record shows that the master of the *Champagne* had "effected a diminution of her speed in conformity with the circumstances" of fog, and "after having caused his siren to sound at intervals of thirty seconds and doubled the lookout," *he eased his speed to 14 knots,*" "that at the sound of the whistle of the *Ville de Rio,* he ordered the engineer to go slow, which brought his pace down to

10 knots," fols. 3,646, 3,647; and "that as soon as he saw the *Ville de Rio,* Captain Traub reversed his engines full speed," fol. 3,648; and that finally at the moment of collision the officers on board estimated the speed of the *Champagne* at 7 knots. Fol. 3,647.

On these facts the Court of Appeals of Rouen seems to have held that the *Champagne* was without fault. The facts found indicate that the *Champagne* was not proceeding at moderate speed in a fog. An American court would probably have held her in fault. *The Chattahoochee,* 173 U. S., 540, 548; *The Umbria,* 166 U. S., 404, 417.

The other case to which the court refers, the *Ailsa* and the *Bourgogne,* occurred in 1896, in New York harbor, while the *Ailsa* was at anchor, and the *Bourgogne,* under the charge of a local pilot, was moving out of the channel and preparing to anchor on account of fog. 86 Fed. Rep., 475.

The case is not analogous in any particular to the other cases, and is not one, as it seems to us, which detracts in the slightest degree from the persuasiveness of the other four cases in which the findings of judicial tribunals showed to the petitioner that its vessels, when in open waters and under the command of their own officers were in the habit of running at excessive speed in fog.

2. The petitioner had notice at the end of every voyage of the speed at which its steamers had been operated during fog.

The proofs previously referred to show that on a great many of the voyages the steamers ran at substantially full speed in fog. *Ante,* pp. 78-85.

Notice of the manner in which the vessels were navigated in fog was communicated to the petitioner by the masters of the vessels in at least two ways at the end of each voyage in Havre.

a. Separate log books were kept on each steamer for each voyage from Havre to New York and return, in which the condition of the weather, the duration of fog, the distance run in each watch, and from day to day, during foggy and clear weather, were carefully recorded. Fols. 973, 1058, 1060, 1062, 2873, 3874, 2916, 2918.

These books, at the end of each voyage were delivered to the petitioner's superintendent at Havre, fols. 1421, 1429, and were sent by him to the head office of the Company in Paris. Fols. 1421, 1429, 2967, 2968.

In the case of *The Bretagne* and *The Tellus* the Court found that the speed of the *Bretagne,* which was found to have been "very near her maximum," was determinable from the journal of the engine and "by the officers log." Fol. 3507. This circumstance seems to show that the logs actually recorded the speed and fog as above described.

b. In addition to the logs, the captains delivered at the end of each voyage what was called a *Rapport de Mer,* or Sea Report, which treated of all the circumstances of the voyage. Fols. 1419-1421, 2960. A form on which this report was

made is printed in the record. P. 1245. The blank contained a heading for the dates of departure and arrival, the state of the weather and of the sea, fog, [*Brume*], currents and numerous other details of the voyage. This report was sent to the head office in Paris. Fols. 2960, 2961. A copy of it "was transmitted to every service, and every manager had to sign it to show that he had seen it." Fol. 2961.

c. If there was any delay by fog, it must also have been reported in the *proces verbal,* or official report, required by Article 395 of the *Service a Bord.* As no such reports are referred to in the proofs, it would appear that no delay by fog occurred.

This article specifically required that any delay by fog must be made known by the captain, in agreement with the agent of posts, by means of a *proces verbal,* or official report. Fols. 433, 434.

If there was no agent of posts on board his duties fell on the captain. Fol. 7001. In that event the captain alone must have made out the report, showing the delay caused by fog, if any delay occurred.

No proof has been given with regard to such special reports, but as the company required them to be made out, the presumption would be that it received them, if any delay by fog actually occurred. As no mention is made in the testimony of any such report showing the extent of any delay by fog, it is to be inferred that no such de-

lay occurred. And if the petitioner did not receive any such report it must have known that its steamers were not in the habit of delaying for fog.

VI.

The fact that the petitioner had knowledge from the logbooks that its captains were in the habit of running at excessive speed in fog is clearly indicated by its conduct on the examination by the claimants of three of its captains.

The claimants first sought to show the practice of petitioner's steamers to navigate at excessive speed in fog, by examining certain of its captains in New York. In each instance the captain was subpœnaed to attend and produce his logbooks for the current voyage.

Captain Sauveur Santelli, the master of *La Touraine* was called on Aug. 7, 1900. Fol. 920. When the witness appeared before the commissioner, the petitioner's counsel moved for an adjournment on the ground of his illness, and on the further ground "that this proceeding is in the nature of a penal action, and that no officers of the petitioner can be subpoenaed to testify in this proceeding." Fol. 921. He further moved to set aside the subpœna, on the ground "that the call for the logbooks is irregular and invalid because the same is the property of the petitioner and is temporarily and especially in the custody of the witness as an employe of the petitioner, and that an officer of the defendant company should be called upon to produce them." Fol. 922.

These objections being ignored, the captain was sworn, and testified that he was master of the *Touraine*, fol. 926, and had commanded six of the petitioner's steamers. Fol. 927. He stated that he had on board the ship a copy of the *Service a Bord*, which he was directed by subpoena to bring, but that he had not brought it. Fols. 928, 929. He added that he probably had not opened it for fifteen years. Fol. 929. He was shown a copy of Article 395 of the *Service a Bord*, which was annexed to the petitioner's answers to interrogatories, but refused to answer whether it was a copy of that which he had on board. Fol. 930. Asked whether any other instruction had been furnished to him in reference to the speed of the steamers in fog besides that contained in Article 395, he refused to answer. Fol. 931. He refused to answer any questions with regard to the collision between the *Touraine*, of which he was master, and the *Sully*, fol. 932, above referred to. *Ante* pp. 98, 99. It appeared from the judgment in that case that his steamer, had been running at the time of the collision at the rate of 16 1/2 knots in fog; but he refused to answer whether that was or was not a fact. Fols. 3,485, 936. He also refused to say whether he had ever conferred with any of the officers of the company as to the custom of the steamers to proceed at a high rate of speed in a fog. Fol. 937. Asked whether he had brought the logs of the *Touraine*, which he was subpœnæd to produce, he answered that he had; but, on the instruction of the peti-

tioner's counsel, he refused to produce them. Fols. 937, 938.

The refusal of the witness to answer questions as above, was certified to the court by the commissioner. Fols. 941, 943. The opinion of the court with reference to them is as follows:

"BROWN, *J.*: My rulings in the above matter are:

"1. That any book of instructions issued by the company to its captains and in the possesion or under the control of the witness should be produced.

"2. That any log of steamers in the possession or under the control of the captain, being a witness, should also be produced; neither the said log nor the book of instructions being such books as are exempted from production.

"3. That the witness should not refuse to answer questions put to him on the ground of supposed immateriality, but should answer all questions, any objections thereto being noted by the commissioner, except that the witness may decline to answer, if his answers would tend to criminate himself, and he so testifies.

"4 That the counsel has no authority to instruct the witness not to answer." Fols. 945, 947.

An order was duly entered to this effect on Oct. 16, 1900. Fols. 952-954.

Captain Santelli was produced for further examination on December 24, 1901. He said that he was then an Inspector or Controller of the company, with headquarters at Havre. Fol. 2801. He did not, however, produce his logbook. Fol.

2,804. He had left the book in Havre, in charge of the company. He had not occupied himself with any effort to produce it. Fol. 2,806.

In answer to certain questions with regard to the consequences of the judgment in which his vessel had been condemned for the collision with the *Sully*, the petitioner's counsel instructed the witness that he might or might not answer the questions as he chose, and the witness again refused to answer. Fols. 2,812-2,827.

The claimants called Emanuel Fajolle, the master of the *Champagne*, on July 24, 1900. P. 338. When the witness appeared before the commissioner in pursuance of the subpœna that was served upon him, p. 343, the petitioner's counsel instructed him not to take the oath. P. 1,016. The witness thereupon refused to be sworn. The commissioner informed the witness of the nature of the proceeding; but the witness still refused to be sworn. Fols. 1,018, 1,019. An attachment was accordingly issued against the witness, fols. 1,022, 1,023, and, in consequence of this, he voluntarily appeared and took the oath on July 25, 1900 Pp. 345, 346.

At the outset of the examination the petitioner made similar objection to the subpœna *duces tecum*, which required the production of the ship's logbooks. Fol. 1,025. The commissioner having declined to rule on the motion, the examination proceeded; and it appeared that Captain Fajolle had commanded four of the petitioner's steamers, three of which ran between New York and Havre.

Fol. 1,034. His memory was very poor as to the number of his voyages in the New York service. Fols. 1,039, 1,044. He was then asked:

"Q. Have you brought a copy of the *Service a Bord* that you were subpoenaed to bring? A. I did not bring it.

Q. Why not? A. Because I have not got it on board, and because I think that the editions were returned for revision, as they were very old." Fol. 1,045.

He had never paid any attention to the regulation when he had it. Fol. 1,047.

He was then asked:

"Q. Have you produced the logs of *La Champagne?* A. Yes.

Q. The two? A. Yes .

Q. One for the deck, and the other for the engineer? A. Yes.

Q. Are they printed or written? Witness exhibits the logbooks.

Q. Is that log in the form that is furnished generally to the steamers of the company? A. It is always the same form.

Q. Will you produce that log to me for my examination?

Petitioner's counsel instructs the witness not to produce the logbooks.

A. No." Fol. 1,060.

The witness stated that there were entered in the log every day, the course of the vessel, the direction of the wind, the speed of the vessel, and the condition of the weather, for each watch, as to whether foggy or not. Fols. 1,061, 1,062.

The witness also declined, on the instruction of counsel, to produce the engineer's log book, which contained the number of revolutions of the screw. Fols. 1,063, 1,064.

He stated that there was noted in that log, for each watch the number of turns the screw had made. Fol. 1,063.

The witness stated that the vessel had made about 400 miles a day during the voyage, fols. 1,074, 1,076; admitted that fog had been experienced, fol. 1,077; but refused to look at the log-book and state the length of time that the fog lasted. Fol. 1,080. In answer to a question as to whether this was a thick fog or not, the witness answered:

"When one is young the fog is always thick, and when one becomes older the fog becomes lighter."! Fol. 1,081.

The witness stated that the maximum speed at which the steamer was run during her voyage was 17 1/2 knots, fols. 1,092, 1,091; but, in answer to an inquiry as to the lowest rate of speed that she was run, said:

"I pay attention when the speed of the vessel is great, but when it is less I do not pay attention to it; in other words, I pay attention to the record that I make." Fol. 1,094.

The witness was then pressed as to his navigation during fog, and, in answer to an inquiry as to what order he gave when the fog became thick, he answered, "To diminish the speed." Fols. 1,099, 1,101.

Asked how much he diminished the speed, he answered, to half speed. Fol. 1,101. He then stated that his steamer made 69 to 70 turns of her

engine at full speed, but could not remember how many revolutions were made during the time that she was going at half speed. Fols. 1,102, 1,103. Petitioner's counsel instructed him not to refer to the log in order to answer the question. Fol. 1,104. The witness answered, however, of his knowledge, that at half speed the steamer made from 12 to 13 knots, fols. 1,105, 1,107; and, after some evasion, fols. 1,107-1,110, the witness finally admitted that the steamer was run at that speed during the fog. Fol. 1,110. The witness maintained that this was moderate speed for the *Champagne* within the meaning of the international regulations. Fols. 1,100, 1,112.

The examination was then adjourned to permit the questions which the witness had refused to answer to be submitted to the court for its ruling. Fol. 1,122. The witness failed to appear at the adjourned date, and an attachment was issued against him. Fol. 1,137. It was subsequently discharged when the witness voluntarily appeared and expressed his willingness to continue the examination before the commissioner under the original subpoena. Fols. 1,148, 1,149.

At the adjourned hearing, on January 15, 1901, fol. 1151, the witness did not have the log books with him. Fol. 1,153. A further adjournment was then taken; and at the adjourned date, February 13, 1901, fol. 1157, the witness again failed to produce the logs, stating that he had turned them over to the company in Havre "according to orders". Fol. 1,158. He had made no efforts since

the last adjournment to produce them. Fol. 1,158.

Counsel for the claimants pressed the question as to why the log books had not been produced at the adjourned hearing in pursuance of the original subpoena, fols. 1,159 to 1,175, and finally the petitioner requested that the examination be suspended and the record certified to the court to decide whether this line of examination should be continued. Fol. 1,175.

Counsel thereupon, on February 13, 1901, went before the court. In the course of a long colloquy between the court and counsel, pages 393-403, in which the general subject of the right of claimants to see the log books was discussed and upheld,

Brown, *J.*, said:

"I think he" (witness) "ought to answer this question. There is a great deal of difficulty in getting the direction of the court complied with. There is a direction for the production of certain books, and in one way and another the thing is postponed and postponed and defeated and defeated under one argument and another argument, so that no progress is made. If the court decided that that log should be examined, then there is no reason why it should not be. I cannot understand your proceeding here. While you are contumacious—it does not make much difference whether it is your captain or your company—if you are contumacious I must dismiss the proceeding." Fols. 1,182, 1,183.

Counsel for the petitioner expressed the hope that the court would not take such a view, and added that he had the most abundant instruc-

tions to submit to all the orders of the court. Fol. 1,183.

Counsel further said:

"If your Honor, on the presentation of this question as to whether the company itself shall produce these books, makes an order that they shall produce them, *they will be sent over here.*" Fol. 1,194.

The court intimated that such an order would be proper, fol. 1,204, and petitioner's counsel again said:

"That order will be obeyed to the letter." Fol. 1,205.

The upshot of the matter was, that the witness stated, when further examined, that he had no instructions either to produce or not to produce the log. Fols. 1,208, 1,209.

The third captain examined by the claimants was Captain Poirot, who had commanded six of the petitioner's vessels, including the *Bourgogne*. P. 319.

The witness appeared before the commissioner on November 28th, 1900, in pursuance of subpoena, when petitioner's counsel moved for an adjournment until December 26th, which was granted. Fols. 956, 958. On the adjourned date neither the witness nor the counsel for the petitioner appeared before the commissioner. Fol. 958. A further adjournment was taken until April 16, 1901, when the witness was produced, and testified that he had been subpoenaed to pro-

duce the logbooks on his first examination, but that he was not told to bring them at the adjourned hearing. Fols. 967, 968. He had handed them over to the company. Fol. 967. The witness stated that he would inform the company that counsel desired him to produce the logbook on his return to New York. Fols. 983, 984. The hearing was then adjourned.

On his next arrival in port the witness appeared on May 15, fol. 988, and stated that he had not brought the logbooks, and had not received any order from the court directing him to produce them. Fols. 988, 989. He added that he had informed the chief of equipment of the bureau that he was under subpœna to produce the logs, but that he had not asked for them. Fol. 990. He made no effort to obtain them. Fol. 991.

The record thus presents three instances of a contumacious thwarting by the petitioner of the direction of the court to produce its log books, on the examination of witnesses. Neither of the Courts below appears to have given any weight to the petitioner's misconduct, in this regard.

VII.

The disobedience of the order of the court requiring the production of the log books of the Bourgogne and of other steamers navigated by Captain Deloncle, for two years prior to the collision, creates a presumption adverse to the petitioner which corroborates the claimants' proof

that the petitioner's steamers were habitually run at immoderate speed in fog.

During the examination of the three captains above referred to, on which the judge held that log books subsequent to the collision were competent to prove the practice of improper navigation of petitioner's steamers in fog, fols. 946, 1201-1204, petitioner's counsel, while resisting the production of the log books then under discussion, said: "If your Honor, on the presentation of this question as to whether the company itself shall produce these books, makes an order that they shall produce them, they will be sent over here," fol. 1194; and when the court intimated that such an order would be proper the counsel again said, "that order will be obeyed to the letter." Fol. 1225.

Those promises were made on February 13, 1901. Fol. 1157.

Accordingly, on April 16, 1901, the claimants obtained an order requiring the petitioner to show cause why it should not "produce upon the trial of this cause all the logs in the petitioner's possession which were kept on board of the steamship *Bourgogne*, or any other of the steamers of the petitioner on their voyages between Havre and New York, during the three years before the 4th of July, 1898." Fol. 491.

This order was granted on the affidavit of Mr. Robert D. Benedict, one of the proctors for the claimants, in which he stated "that it is a

matter of general knowledge that for years before the loss of the steamer *Bourgogne*, in the collision between her and the *Cromartyshire*, steamers of the petitioner in crossing the Atlantic had generally been run in thick fogs at a speed which was not moderate, as required by the International Navigation Rules"; that he was informed and believed that the "logs of said steamers which were kept on them during said voyages contained entries showing that the speed of such steamers during fogs was not a moderate speed," that in the course of these proceedings deponent had endeavored to obtain by the examination of captains of steamers belonging to the petitioner an examination of the log books of such steamers in order to obtain evidence to establish the fact that the steamers were generally run in fog at rates of speed which were not moderate; and that the masters of such vessels, under the advice of petitioner's counsel, refused to produce the said logs in evidence or to allow deponent, while such testimony was being taken, to make any such examination whatever of any of such logs. The affidavit further stated that one of the captains examined had shown that the logs of the steamers at the end of each voyage were sent on shore to the offices of the petitioner, and that deponent therefore believed that the logs were in possession of the petitioner in France. Fols. 494, 495.

The affidavit of Mr. Edward K. Jones, proctor for the petitioner, in which he opposed this ap-

plication, controverted the allegation that the log books contained entries showing that the speed of the steamers during fog was not a moderate speed, fol. 503, and concluded with the statement: "Deponent also *denies that the logs of the said steamers kept during the voyages before the collision in question will furnish evidence which is material* to the disposition of the issues in this action." Fol. 505. This unqualified statement seems to indicate that the counsel had examined the logbooks, and was giving his opinion of their contents. The affidavit was verified April 20, 1901. It did not contain any denial of the averments in Mr. Benedict's affidavit "that the *said logs of said steamers remain and are in possession of the petitioner* in France," fol. 497, *nor did it contain any suggestion that the log books had been lost or destroyed.*

The Court granted the motion on May 15, 1901, as follows:

"It is ordered that the petitioner herein produce on or before the trial of this cause all logs kept on board the steamship *La Bourgogne* during the period of two years previous to the collision in the petition mentioned, and also all logs kept on any other steamer of the petitioner running between Havre and New York for the same time, of which the same captain who was captain of the *Bourgogne* at the time of the collision was then master." Fol. 510.

The order of the court requiring the production of the log book was immediately dispatched by the New York agent of the petitioner to its head of-

fice in Paris. Fols. 2,936-2,964. That is the place to which the log books had been sent. Fol. 1429.

On the first day of the trial, October 9, 1901, counsel for the claimants called the attention of the court to the order of Judge Brown, dated May 15, 1901, requiring the production of the logs, and asked that they be produced. The proceedings on that point are as follows:

"Mr. Benedict: I call your honor's attention to the order made by Judge Brown that the petitioner produce on or before the trial of this cause all logs kept by the steamer during the period of two years previous to the collision, and also all logs kept on any other steamer of the petitioner running between Havre and New York at the same time of which the captain of the *Bourgogne* was then master, and I call for the production of those logs.

Mr. Jones: I have transmitted that order to the company, and here is the answer; we haven't the logs, and the reason, I give in a letter which the agent has received from the company.

Mr. Benedict objects.

The Court: That is not evidence. The logs may be lost, and then you have got to prove it. You have got to put somebody on the stand to prove it, to testify.

The logs are not produced." Fols. 1404, 1405.

Subsequently, during the examination of Paul Simon, the former Marine Superintendent at Havre, counsel for the petitioner made a further effort to introduce the letter in evidence, but the court said again, "It is hearsay; it is simply a letter"; and again excluded it. Fols. 1423, 1424, 1425, 1426.

Notwithstanding the repeated exclusions of this letter by the court, counsel for the petitioner, against the claimants' objection, again offered it in evidence and had it marked as an exhibit during the examination out of court of Mr. de Bocande, the New York agent of the petitioner, on Dec. 28, 1901. Fols. 2947, 2955, 2965, 2966, p. 1216.

When the letter was offered at that time it was objected to, "as already having been offered and ruled out, and as immaterial also." Fol. 2966. In answer to this objection the following appears in the record:

"Counsel for petitioner states that the statement of counsel for respondents as to the ruling out of this letter is incorrect, the judge having ruled that it would be necessary for petitioner to call a witness to prove it." Fol. 2966.

This is a misstatement of the ruling of the judge, and apparently misled the courts below. What the judge ruled was, not that it would be necessary for the petitioner to call a witness to prove the *letter*, but that it must call a witness to prove the *loss of the logbooks*. Fol. 1405. The language of the court was:

"The logs may be lost, and then you have got to prove it. You have got to put somebody on the stand to prove it." Fol. 1405.

The ruling of the court that the loss of the logs must be established by competent evidence, was made on the first day of the trial, October 9, 1901.

Fols. 1316, 1405. When the letter was again offered on December 28, 1901, it was objected to as having been previously excluded, fol. 2966, and the attention of the petitioner's counsel was thus again drawn to the necessity of proving the loss of the books. The taking of testimony out of court proceeded until March 3, 1902, fol. 3550, and the case was not finally argued before Judge Townsend until March 10, 1902, fol. 12—five months after the judge had ruled that proof must be given of the loss of the log books if they were not produced.

No legal excuse was ever offered for the failure of the petitioner to comply with the order of the court. No proof was given by an officer of petitioner or by any one in its employ, that the logs had been destroyed or lost. Even the letter that crept into the record after the court had held that it was inadmissible, did not say that the logs were lost or destroyed, or that they could not be produced. All it said was that at the time the letter was written the log books "have not been kept." Fol. 3632. There is no legal excuse to account for the non-production of the logs.

It must therefore be presumed that the logs were in the petitioner's custody, and that the evidence they would have afforded was deliberately suppressed. Yet neither of the courts below made the slightest reference to the contumacious conduct of the petitioner, and its disobedience of the order of the court.

The legal presumption from the refusal of the petitioner to produce these books is that they contain entries which would have supported the claimants' contention and would have corroborated their other proof that the petitioner's steamers commanded by Captain Deloncle, prior to the loss of the *Bourgogne,* were habitually run at immoderate speed in fog.

In *Blatch* v. *Archer,* Cowp. 63, Lord Mansfield at page 65 said:

"It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced and in the power of the other side to have contradicted.

In 1 *Starkie on Evidence,* p. 54, the rule is stated:

"The conduct of the party in omitting to produce that evidence in elucidation of the subject matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for presumptions against him, since it raises strong suspicion that such evidence, if adduced, would operate to his prejudice."

To the same effect: *Commonwealth* v. *Webster,* 5 Cushing, 295, 316; *McDonough* v. *O'Niel,* 113 Mass., 92; *People* v. *McWhorter,* 4 Barb., 438; *Railway Co.* v. *Ellis,* 54 Fed. Rep., 481.

In Clifton v. *United States,* 4 Howard, 242, the controversy related to goods which had been seized by the Government for fraudulent violation of the Revenue Laws. The goods had been entered

at New York upon invoices produced by the claimant to the Collector. They were seized on a charge of under-valuation. During the trial after the Government had offered proof of the under-valuation, the Counsel for the Government "in pursuance to a notice given some months previously called upon the claimant for the production of his ledger containing entries of each of the several invoices of the goods thus imported; also for the production of his cash book for the years 1838 and 1839 embracing the period within which the goods had been imported, and for the entries therein relating to the said importations; also, for the charges of the payment of freight upon said goods; to each of which calls the counsel were answered that the claimant had no such book in Court." Pp. 243, 244. A further call of the same nature was made later on, which was answered in the same way, p. 244. The Court instructed the jury that the Government must show upon the trial that there was probable cause for the seizure, and if that had been shown, of which the court was to judge, the burden of proof was on the claimant to show that the goods had been invoiced at their actual cost. Pp. 244, 245. The jury were instructed further that "the claimant knew from whom he had bought the goods, and what their actual cost was, and yet he had not produced the evidence nor accounted for its absence; *that to withhold testimony which was in the power of a party to produce in order to rebut a charge against him, where it was not supplied by equivalent testimony might be as fatal as posi-*

tive testimony in support or confirmation of the charge; that if the claimants had withheld proof which his accounts and transactions with these parties afforded, it might be presumed that if produced they would have operated unfavorably to his case." The claimant excepted to this portion of the charge. It was held that the charge was correct.

Mr. Justice Nelson adverted to the circumstances under which the call for the books was made by the Counsel for the Government as follows, p. 247:

"Probable cause for the prosecution having been thus sufficiently established, the claimant went into his defence; and, instead of furnishing evidence of the prices actually paid by him to the houses abroad from whom the goods were purchased, as he might have done, either by executing a commission to take their testimony, or by persons concerned in making the purchases, or *by the production of the books of account that had been called for*, as the call afforded him an opportunity to put them in evidence, he placed the defence altogether on the judgment and opinions of merchants and other persons acquainted with this description of goods, as to the value and cost of the article in the home market, tending thereby to confirm and support the correctness of the valuations as fixed in the invoices. The burden of the case was on the claimant, and it was in this stage and posture of it that the instructions were given which are the subject of the exception."

Dealing with the duty of the claimant under

these conditions the learned justice continued, p. 248:

"Under these circumstances, the claimant was called upon by the strongest considerations, personal and legal, if innocent, to bring to the support of his defence the very best evidence that was in his possession, or under his control. This evidence was certainly within his reach, and probably in his counting room, namely, the proof of the actual cost of the goods at the place of exportation. He not only neglected to furnish it, and contented himself with the weaker evidence, but even *refused to furnish it on the call of the Government; leaving therefore, the obvious presumption to be turned against him, that the highest and best evidence going to the reality and truth of the transaction would not be favorable to the defence.*"

The principle thus laid down was reaffirmed in *Kirby* v. *Tallmage*, 160 U. S., 379, 383, and in *The New York*, 175 U. S., 187, 204.

In *Wylde* v. *Northern Railroad Co. of New Jersey* and *The Erie Railway Co.*, 53 N. Y., 156, an action was brought jointly against the two railroads by a passenger who had purchased a ticket from the Erie Railway Co. for transportation partly over the lines of the Erie and partly over the lines of the Northern Railroad Co. of New Jersey. Judgment was recovered by the plaintiff and was appealed from on behalf of the Northern Railroad, on the ground that no contract by that company with the plaintiff had been shown. The court stated that it must appear, in order to sustain the judgment against the

Northern Railroad that there was evidence from which the jury could have found that the defendants were joint contractors in issuing the ticket, and then stated, p. 163:

"The proof, it must be admitted, is not very satisfactory to establish a joint interest, in the nature of a copartnership between the defendants, in the passenger traffic and in the sale of commutation tickets. But it tends to show that the interests of the defendants were consolidated, and that there were mutual and interchangeable relations and a community of interest and action between them, in the running and management of the trains. The defendants gave no evidence on the trial. *It was admitted that the relations of the corporations to each other were defined by written contracts. The defendants, upon notice to do so, refused to produce them.* The defendants knowing the truth and omitting to speak, *every inference warranted by the evidence should be indulged against them.* There was some evidence of a joint contract by the defendants, and the judgment should be affirmed".

In the case of *A Quantity of Distilled Spirits*, 3 Benedict, 70, Mr. Justice Blatchford, then District Judge, commenting to the Jury on the failure of the claimant in a Revenue case to give evidence in regard to certain book entries, said at page 85:

"Where a party is in possession himself of the means of clearing up a doubtful point, and does not do it, but instead of that, resorts to all sorts of evidence on the subject, except the direct evidence which he himself can give, every doubt is to be resolved most strongly against him."

In *Railway Co.* v. *Ellis,* C. A. 54 Fed. Rep. 481, 483, Caldwell, *J.,* said:

"Now it is a well settled rule of evidence that when the circumstances in proof tend to fix a liability on a party who has it in his power to offer evidence of all the facts as they existed, and rebut the inferences which the circumstances in proof tend to establish, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would support the inferences against him, and the jury is justified in acting upon that conclusion."

The Courts below did not give proper weight to the petitioner's act in witholding the log books. They do not even allude to it. Yet it was a matter which, if rightly considered, detracted greatly from the weight of such proofs as the petitioner offered on the subject of the customary navigation of its ships in fog, and created a presumption, which was of probative force, in favor of the claimants. The disobedience of the order and the witholding of facts, or the means of showing facts, might not create a presumption sufficient of itself, to prove the point under discussion, *Houston* v. *Eustace's Lessee,* 2 How., 653; but it would warrant a jury or a court in drawing the strongest possible inferences against the petitioner, that could be drawn from the proof actually adduced by the claimants. *National Car Brake Shoe Co.* v. *Terre Haute Car, &c., Co.,* 19 F. R., 514.

The Courts below erred in failing to apply this

legal rule to the consideration of the facts. They seem to have accepted the explanation contained in the letter from the company to its agent, fol. 3632, which had been excluded as hearsay. If they had rejected the excuse tendered for the non-production of the log books, as they should have done, and had drawn the strongest possible inference against the petitioner that could be derived from the claimants' proofs, as the law requires, there would have been a finding that the petitioner's officers knowingly tolerated and encouraged the running of its steamers at excessive speed in fogs, and therefore, it had knowledge of and was in privity with the improper navigation of the *Bourgogne* that caused her to be sunk with a most appalling loss of life and property.

To sum up this branch of the case, we maintain that the foregoing review of the evidence, and of the legal principles that are applicable to it, shows that the claimants were entitled to a finding by the Court of Appeals that the petitioner encouraged, sanctioned and knowingly tolerated the practice of navigation at immoderate speed in fog, and that accordingly the loss of the *Bourgogne* occurred with its privity or knowledge, within the meaning of the statute. *Northern Pacific Ry. Co.* v. *McKels*, 50 F. R., 718, 722.

The error of the court below in failing to make this finding, should be corrected by this court, and the claim of the petitioner to a limitation of its liability should be denied on that ground.

VIII.

The petitioner was operating the Bourgogne in violation of §4488 of the Revised Statutes, which required her to have such numbers of life boats and life rafts as would best secure the safety of all persons on board in case of disaster. She carried 714 persons but had boat and raft capacity for only 658.

Section 4488 of the Revised Statutes of the United States provides as follows:

"Every steamer navigating the ocean, or any lake, bay, or sound of the United States, shall be provided with such numbers of life-boats, floats, rafts, life-preservers, and drags, as will best secure the safety of all persons on board such vessel in case of disaster; and every sea-going vessel carrying passengers, and every such vessel navigating any of the northern or north-western lakes, shall have the life-boats required by law, provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such vessels are under speed or otherwise, and so as to allow such dis-engaging-apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water. And the board of supervising inspectors shall fix and determine, by their rules and regulations, the kind of life-boats, floats, rafts, life-preservers, and drags that shall be used on such vessels, and also the kind and capacity of pumps or other appliances for freeing the steamer from water in case of heavy leakage, the capacity of such pumps or appliances being suited to the navigation in which the steamer is employed."

It will be observed that no discretion is given to the supervising inspectors in this section to determine the *number* of life-boats, rafts, &c., or the *kind* of boat-disengaging apparatus that is provided for. The statute itself decides these questions.

The provisions of Section 4488 are made applicable to foreign vessels by the amendatory act of August 7, 1882; 22 Stat. at L., 346. That act further provided that foreign vessels should be liable to visitation and inspection by the proper officer in any of the ports of the United States respecting any of the provisions aforesaid. 22 Stat. at L., 346.

a. The *Bourgogne* was not equipped with the number of boats required by our law.

The petitioner stated in answer to an interrogatory that when the *Bourgogne* left New York on the voyage on which she was lost, she carried 491 passengers and 223 crew, making a total of 714 persons. Fols. 297, 436. In answer to a further interrogatory it stated that the steamer carried on that voyage 12 boats and 4 rafts, of the aggregate capacity of 6604 cubic feet. Fols. 297, 436, 437. Allowing 10 cubic feet to a person, fols. 1603, 1616-1619, which is the rule of the inspectors applied to foreign vessels, her boat and raft capacity on the petitioner's admission was limited to 660 persons, or 54 less than she carried.

According to the report of the local Inspectors at New York the boat and raft capacity would

only accommodate 658 persons, leaving 56 to be drowned in case of disaster. Fols. 3136-3149, 3473, 1595-1609, 1621, 1622.

Petitioner's evidence on the subject also shows that the boat and raft capacity was sufficient for only 660 persons. Fol. 3,281.

The district judge found that the boat and raft capacity would carry only 658 persons. Fol. 3748. The Court of Appeals seems to have adopted this finding. Fol. 7119.

The undisputed facts, therefore, show that the petitioner did not outfit and equip the vessel so as best to secure the safety of the passengers in case of disaster as the law requires. This circumstance puts it in privity with the damage that the passengers and their representatives have suffered. *The Rio Janeiro,* 130 F. R., 76; 195 U. S., 632.

The courts below exonerated the petitioner because the *Bourgogne* had received in March, 1898, a certificate from the local inspector of steam vessels at New York certifying that with the boat capacity above mentioned the steamer was "allowed to carry 1,019 persons." Fols. 3,453, 3,455; *opinion of District Court,* fols. 3,-751, 3,753; *opinion of Court of Appeals,* fol. 7,119.

The supervising inspector general, who was examined by the petitioner, was asked this question:

"Q. If she had aboard more passengers than 660 would she have been provided with a suffi-

cient number of life-boats as would best secure the safety of all on board? A. Practically, yes; that was all the boats she could carry without interfering with the management of the boat, because carrying more boats would create more danger than the lack of boats. I would state that as a general principle." Fol. 3,333.

This testimony influenced the decision of both courts. Fols. 3752, 7119.

It is apparent, however, from the answer of the witness, that he was merely stating a "general principle," and did not speak with any special knowledge of the boat room on the *Bourgogne*. The witness had never seen the *Bourgogne*. Fol. 3,332.

The *Bourgogne* was a steamer 500 feet in length, fol. 1,347; she carried 12 boats, of different lengths; the length of all the boats added together being 324 feet 8 inches. Fol. 3473. The boats were placed in two rows, one on each side. They therefore occupied a space of 162 feet 4 inches on each side. Fol. 1,399.

In order to have had boat capacity for 714 persons, she would have required two more boats, each 27 feet in length. Fols. 1597, 3473, 1606. This would have made the total length of the boats on each side 191 feet. The boats would then have occupied less than two-fifths of the entire length of the steamer.

It is not apparent that two more boats would have interfered materially with the management of the ship. There is quite as much reason to say, *a priori*, that it would not have interfered with the management, as there was for Mr. Du-

mont, who had not seen the ship to guess that it would have interfered with the management.

While the certificate of the inspector may have been sufficient to protect the petitioner from complaint by the federal government, it does not foreclose the question as between the petitioner and its passengers.

The statute is specific in requiring the steamer to be fitted with such a number of boats and rafts as would best secure the safety of all persons on board in case of disaster. It did not leave any discretion to the supervising inspectors to grant a certificate to a vessel which was not supplied with boats and rafts sufficient to carry the whole number of persons on board. It said that they might prescribe the *kind* of boats and rafts, but the statute itself fixed the *number*, namely, such a number as would best secure the safety of all persons on board in case of disaster.

The certificate is not evidence of the fact that the steamer had a sufficient number of boats, when the testimony shows conclusively that from the moment of collision 56 or 58 persons were doomed to be drowned.

In *The Valencia*, 110 F. R., 221, the steamboat inspectors had certified that a steamer had accommodation for, and was authorized to carry 128 first-class passengers and 99 second-cabin passengers. She did not, in fact, have any accommodations for second-cabin passengers. The court allowed damages to be recovered by pas-

sengers for their personal discomfort and losses. Hanford, *J.*, said, at page 223:

"The certificate bears an indorsement, made on the face of it, and signed by the inspectors, to the effect that the *Valencia* had provided accommodations for and was authorized to carry 99 second-cabin passengers. This indorsement must be rejected as evidence of the fact that accommodation for the additional passengers had been provided, because all the testimony in the case proves conclusively that the *Valencia* did not have accommodations for any second-cabin passengers. * * * The scheme of obtaining official permission to crowd the ship beyond the limit of accommodations provided for passengers may be a protection against any prosecution for the statutory penalty prescribed for excessive overloading of passenger ships, but it is not a ground of defense in a suit like this, to recover damages for injuries to passengers resulting from overcrowding."

The certificate purporting to authorize the *Bourgogne* to carry 1,019 passengers was based on sub-division 12 of rule 3 of the General Rules and Regulations prescribed by the board of Supervising Inspectors, in force in July, 1898, which provided that the total capacity of life-boats, or of life-boats and life-rafts, on steamers navigating the ocean *shall not be less* than the capacity given according to the tonnage in the following table:

	"Total capacity of boats Cubic feet
"Gross tons steamers over 7,000 and not over 7,500	5,670

"Not more than one third of the boat capacity required on ocean steamers may be substituted by its equivalent in approved life-rafts or approved collapsible (folding) life-boats." Fols. 1,609-1,615.

The gross tonnage of *La Bourgogne* was 7,395. *Petitioner's Exhibit 8*, fol. 3,453. she must have had, under the foregoing rule, *not less* than 5,670 cubic feet of capacity of life-boats. With her rafts she actually had 6,604.

But this rule did not have the force of law as applied to the *Bourgogne*. It is enforceable in a particular case, only by reason of section 4,405 of the Revised Statutes, which provides:

"The board shall establish all necessary regulations required to carry out in the most effective manner the provisions of this Title, and such regulations, when approved by the Secretary of the Treasury, shall have the force of law."

Section 4,400 enacts that the provisions of that title, including section 4,405, shall not apply to "vessels of other countries." The Act of August 7, 1882, which extended the application of a large number of sections of that title, R. S., Secs. 4,399

to 4,500 inclusive, to foreign vessels, did not include section 4,405 among those so extended.

The inspectors did not, accordingly, have authority to say that the boat capacity of the steamer should be based on her gross tonnage instead of on the number of persons to be carried.

But even if it be considered that the supervising inspector's rule would be made applicable by implication arising from the provision of the Act of August 7, 1882, that foreign vessels should be liable to inspection by the proper officer in respect of section 4,488, still the rule would be nugatory, because section 4,488 limited the discretion of the supervising inspectors to the determination of the *kind* of boats and rafts that should be furnished. It gave them no power to modify the requirement that the vessel should be provided with such *numbers* of life-boats, floats, rafts, &c., "as will best secure the safety of all persons on board such vessel in case of disaster."

Insofar as the supervising inspectors' rules exceed the authority conferred on the inspectors by the statute, they are of no force or validity. *The John King*, 1 U. S., App., 64, 70; 49 F. R., 469, 472, 473.

The reasonable construction of Section 4,488, is that a foreign steamship carrying passengers from a port in the United States, must be provided with such numbers of life-boats and life-rafts as will float all the persons on board in case the ship sinks. If every boat and life-

raft that the *Bourgogne* carried had been successfully launched and fully laden with the passengers and the crew, 56 or 58 persons would necessarily have been left to sink with the ship. It seems too plain for argument that under those circumstances she was not fitted with such numbers of boats and rafts as would best secure the safety of all persons on board as the law required.

Section 4,493, of the Revised Statutes provides that when damage is sustained by a passenger or his baggage from collision or other cause, the master and owner of the vessel shall be liable therefor, if the damage happens through any neglect or failure to comply with the provisions of Sections 4,399 to 4,500 inclusive.

Because this section was not extended to foreign vessels by the act of August 7, 1882, the Court of Appeals seems to have entertained the view that there was no right to recover similar damages in this proceeding, on the ground of the petitioner's failure to comply with Section 4,488. Fols. 7119, 7120.

It would seem, however, that the civil right of the passenger against a foreign ship owner would be the same as that provided by Section 4,493, against a domestic vessel, wholly irrespective of any statutory provision. That view was intimated by this court in *Butler* v. *Steamship Co.*, 130 U. S., 527, where Mr. Justice Bradley, in dealing with a case relating to a domestic vessel, at p. 553, said:

"By the 43rd section (Rev. Stat. §4493), it is declared that whenever damage is sustained by a passenger or his baggage, the master and owner, or either of them, and the vessel shall be liable to the full amount of damage, if it happens through any neglect or failure to comply with the provisions of the act, or through known defects, etc. This is only declaring in the particular case, what is true in all, that *if the injury or loss occurs through the fault of the owner, he will be personally liable,* and cannot have the benefit of limited liability."

b. The petitioner further failed to comply with section 4,488, in that it had not provided its lifeboats "with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such vessels were under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water."

It was shown that a boat-disengaging apparatus corresponding to the provisions of this statute, fols. 3168-3170, 3194-3195, was then, and for some time had been, in use in the United States Navy, fol. 3171, the Revenue Service, fol. 3402, Army Transport Service, fol. 3188, the mercantile marine of the United States, England and Germany. Fols. 3178, 3180, 3204, 3205. It also appeared that such boat-disengaging apparatus as was described in the statute was manufactured by Harland & Wolff, owners of the great shipyard at Belfast. Fol. 3204.

The *Bourgogne* was not provided with such boat-disengaging apparatus as the statute required. Her boats were equipped with ordinary blocks and falls, having plain hooks on the blocks, which could only be disengaged by a man at each end of the boat. Fols. 1363, 1386-7, 3191-3, 3200.

The record clearly shows, therefore, that such a boat-disengaging apparatus as was required by section 4,488 of the Revised Statutes could have been but was not provided.

The fact that the board of supervising inspectors had not up to that time approved any such device, fol. 3289, is immaterial. The statute provided, in terms, that it should be used and left no discretion to the inspectors in the matter of approval.

Section 4,491, which authorizes the inspectors to approve certain equipment before it can be used on vessels, applied only to American vessels. §4400. It was not applied to foreign vessels by the amendatory act of August 7, 1882; nor was §4403 so applied.

In *Johnson* v. *The Southern Pacific Company*, 191 U. S., 196, this Court held that a railway company which neglected to have its cars fitted with the kind of automatic car couplers required by an Act of Congress had not complied with its duty to its employees, and could not, therefore, invoke the defense that an employe who had been injured had assumed the risk incident to coupling cars that were not so fitted. The decision held,

in effect, that the Railway Company was in privity with the cause of the plaintiff's injury.

A ruling that a railroad company is bound to furnish a prescribed kind of safety appliance for coupling cars, is authority for the contention that the petitioner was bound to furnish the boat disengaging apparatus required by Congress.

The Courts below committed a grave error in holding that no such apparatus was available for use at the time the *Bourgogne* was lost. Fols. 3753, 3754, 7119.

The District Judge based his ruling on the statement that the Suprevising Inspector of Steamboats knew of no device capable of satisfying the requirements of the statute, and that the Local Boards of Inspectors have been satisfied by the furnishing of an ordinary block, fall and hook on lifeboats. Fol. 3754. It may be that the Supervising Inspector did not know of any such dis-engaging apparatus, but the proof clearly showed that there was such an apparatus in use, fols. 3194, 3195, not only on vessels engaged in branches of the Government service, but also on coasting vessels, sailing vessels and yachts.

The Court seems to have slighted the testimony of Mr. Raymond and Captain Harris on the ground that they were interested in the apparatus, fol. 3753, and to have formed an unfavorable impression of the value of the apparatus because it appeared that it had failed to obtain the approval of the Steamboat Inspectors. Fols. 3753, 3754. But if it had been rejected by the

inspectors that fact would have been unimportant, because, as we have already shown, the inspectors had no authority to approve or reject such an appliance for use on foreign vessels.

The testimony of Mr. Harris and Mr. Raymond showed that the apparatus was practicable and safe and had been largely used.

The judgment of Mr. Raymond and Captain Harris is completely vindicated by the action of the Board of Supervising Inspectors in adopting, at their annual meeting in 1906, the "Raymond boat releasing hook presented by James R. Raymond, New York, N. Y.," as one of the "instruments, machines and equipments approved for use on steam vessels." *General Rules and Regulations prescribed by the Board of Supervising Inspectors, as amended January, 1907. Edition March 4, 1907*, pp. 129, 134.

As bearing on the weight that may be attached to the opinions of Dumont, the former supervising inspector, who condemned the Raymond apparatus, and of Captain Harris, a graduate of the Naval Academy, who approved of it, it may be noted that Dumont, after having been moved down from the position of Supervising Inspector General, to that of Local Inspector at New York, was removed from office altogether by the President, on account of the destruction of the Steamboat *General Slocum* by fire in New York harbor, with a terrible loss of life, and Captain Harris was appointed Inspector in his place.

The failure to have the *Bourgogne* equipped

with a sufficient number of life-boats and with the required boat disengaging apparatus, was the personal fault of the petitioner. That fault should lead to a denial of the petition. *Butler* v. *Boston S. S. Co.*, 130 U. S., 527, 553; *In re Pacific Mails S. S. Co.*, 130 F. R., 76, 82.

Finally—This French Company, for the sake of making the extra profit on the patronage arising through the speedy voyages of its steamers which, to use the words of the opinion of the Circuit Court of Appeals, it can secure "only by running at excessive speed in a fog," has chosen to disobey the statute requiring its steamers to run at moderate speed in fog. This it has done wilfully, deliberately, and persistently for many years. In all cases of collision occasioned by such excessive speed in fog its liability to pay the damages is conceded, so long as its vessel is not lost, but here, because the steamer was lost, it claims that it is free from that liability. We maintain that, by its disobedience of the law practiced for the sake of gain, it has deprived itself of the protection which the law would otherwise have given against liability. It chose the gain, it should bear the loss.

SECOND POINT.

THE FREIGHT FOR THE VOYAGE WAS NEVER TRANSFERRED TO THE TRUSTEE, NOR WAS ANY BOND FOR IT GIVEN. THE COURT BELOW ERRED IN GRANTING THE PETITIONER A LIMITATION OF ITS LIABILITY WITHOUT HAVING SECURED POSSESSION OF THE FUND TO WHICH IT ASSUMED TO LIMIT THE RIGHTS OF THE CLAIMANTS.

Section 4285 of the Revised Statutes provides that "it shall be deemed a sufficient compliance on the part of the owner with the requirements of this title [including sections 4283 and 4284] relating to his liability for any embezzlement, loss or destruction of any property, goods or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the persons who may prove to be legally entitled thereto * * * from and after which transfer all claims and proceedings against the owner shall cease"

Admiralty Rule 54 of this Court, provides that any shipowner desiring to claim the benefit of limitation of liability may file a libel or petition in the proper district court, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf, "and thereupon said court having caused due appraisement to be had of the amount or value of the interest of said owner or owners respectively in such ship or vessel and her freight

for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for the payment thereof into court whenever the same shall be ordered; or if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and *upon compliance with such order* the said court shall issue a monition * * * and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims."

The petitioner in this case did not ask for an appraisal. It elected to make a transfer of its interest to a trustee. It delivered to Samuel H. Lyman, Clerk of the Court, two life boats and two life rafts; but though the deed of transfer purported to surrender its interest in the freight for the voyage, fol. 110, the petitioner *did not deliver the freight* to the trustee. Mr. Lyman, and Mr. Alexander, his successor as trustee, have certified that no part of the freight for the voyage was actually paid over. Fols. 470, 7,133.

The claimants moved on April 22, 1901, for an order directing the petitioner to deliver to the trustee the amount of freight specified in the answers to the interrogatories. Fol. 473. The

court did not decide the motion, but endorsed on the papers a direction that it be reserved generally without further action at that time. Fol. 476.

The matter remained in that position until after the Court of Appeals handed down its decision on the merits of the case. The claimants then moved in the Court of Appeals for a stay of proceedings until the court should be put in possession of the limited liability fund. Pp. 2276, 2277. The motion was denied, fol. 7135; and after a further hearing the Court of Appeals entered the order now under review, limiting the claimants' recovery to the proceeds of the boats and rafts, and the amount of freight, though the freight was never paid to the trustee, nor secured by a bond.

It will be argued subsequently that the Court was in error in failing to include certain additional amounts in the fund to which it limited the claimants' rights. The amount that the petitioner failed to transfer to the court was conceded by the petitioner to constitute the freight. There was therefore not the shadow of an excuse for its failure to put that amount in the custody of the Court.

The jurisdiction obtained by the Court over the boats and rafts actually transferred by the petitioner to the trustee was sufficient to enable it to consider the case, and to determine, on the merits, that the collision was due to the negligence of the petitioner. *In re Morrison*, 147 U. S., 14, 34. But the refusal of the petitioner to put the court in possession of the

freight, or to secure it by a bond, should have led to a denial of its petition that its liability be limited to the amount of a fund which it did not surrender or secure to the claimants. *In re Morrison, supra* at p. 35.

In *Norwich* v. *Wright*, 13 Wall., 104, 124, Mr. Justice Bradley said:

"But in order to proceed regularly *the court must have possession of the limited liability fund* —that is, the proceeds or value of the ship *and freight*. It cannot distribute a fund of which it has not possession."

In *Ex Parte Slayton*, 105 U. S., 451, 452, Mr. Chief Justice Waite said:

"Any court, therefore, which *gets actual possession of the things to be transferred*, and about which the concourse of claimants is to be had, is a court of competent jurisdiction to try the questions that will properly arise upon the apportionment to be made, even though he should institute proceedings before he or his vessel is sued. The courts will either follow our rules as far as practicable, or do something which is equivalent, *to obtain jurisdiction of the thing about which the litigation is to be had*. No monition can properly issue, either under the operation of our rules or otherwise *until this jurisdiction of the thing has been in some way secured*."

In *O'Brien* v. *Miller*, 168 U. S., 287, 303, 306, 307, the Court held that it was the clear purpose of Congress to require the shipowner, in order to be able to claim the benefit of the Limited

Liability Act, to surrender to the creditors the whole value of the vessel and her freight for the voyage, including all rights of action which are directly representative of the ship and freight; and that if the owner withholds any part of the limitation fund he has not transferred his interest as the law requires..

The fact that the petitioner contested its obligation to account for the freight affords no excuse for failing to surrender it, or to secure it by a bond. Neither of these measures would have precluded the petitioner from raising all the questions that it has raised with regard to its duty to account for freight.

The Court of Appeals in its first opinion held "that the petitioner should pay over to the trustee Fr. 100,703.08 for prepaid passage money, and Fr. 12,716.43 for prepaid freight from New York to Havre, aggregating Fr. 113,419.57, [$22,683], with interest from the date of the disaster." Fols. 7071, 7072. The petitioner did not comply with this ruling. Fol. 7133.

In the face of this refusal of the petitioner, the Court should have refused to grant the relief contained in its final order, p. 2291, under which, in effect, the District Court was directed to distribute a fund that was not in its possession.

The Court has not now and it has not ever had jurisdiction over any specific fund representing the freight for the voyage. It has held that

the petitioner should transfer to the trustee the amount of the New York-Havre freight, fol. 7071, but this has not been done.

All that the Court of Appeals awarded to the claimants on account of freight is a right of action *in personam* against the petitioner, which might have to be prosecuted in France, where its judgment would not be binding on the petitioner. *Hilton* v. *Guyot*, 159 U. S., 113. If this contingency should arise the claimants would get nothing, as the French Courts have already determined that the *Bourgogne* was not in fault. Pp. 1222-1244.

If the petitioner should now become insolvent after the many years during which this litigation has been protracted, the claimants might recover little or nothing and would be entirely without further remedy. This uncertainty of recovery, however remote it might seem, is one to which the claimants should not be subjected.

There is no uncertainty in the provisions of the limitation act nor in the interpretation put on it by the courts. A petitioner can obtain release from the ordinary liabilities resulting from its negligence *only* by transferring the offending thing, or what is left of it, and the money earned by it at the time to the court to distribute if the petitioner is found at fault.

But under the ruling of the Courts below the petitioner has been allowed to obtain the benefits of the act without performing the conditions imposed. The property that has been transferred

by the petitioner is of almost infinitesmal value; while it has retained and had the use, for more than nine years, of many thousands of dollars to which under the decision of the Court below it has had no title.

This Court cannot distribute a fund that is not in its possession; but it can determine that the petitioner has not complied with the requirements of the statute, and that, in consequence, the petitioner is not entitled to the protection that the Act might have afforded. Possession of the life boats gave the court jurisdiction to decide that the damages suffered by the claimants arose from the negligence of the petitioner's servants; but, as the court was not in possession of the entire value of the petitioner's interest in the vessel and her pending freight, so as to be able to turn it over to the claimants, the recovery of damages by the claimants should have been unrestricted up to the amount of their several losses.

The petitioner should be held to the full consequences of its wilful disregard of the law.

THIRD POINT.

THE COURT BELOW ERRED IN DISALLOWING THE CLAIM OF THE S. S. WHITE DENTAL COMPANY. THE PETITIONER FAILED TO SHOW THAT IT HAS ANY DEFENCE TO THIS CLAIM UNDER THE HARTER ACT.

The Commissioner found that the loss sufferred by the S. S. White Dental Company amounted to $17,108.40, but disallowed the claim on the theory that it resulted from faults in navigation within the meaning of the third section of the Harter Act. Fols. 3868, 3869. An exception to the Commissioner's report on this claim was overruled by Judge Thomas, and it was disallowed in the final decree. Fols. 3956, 3959, 3960, 3962, 3890, 3971. The decision on the claim was affirmed by the Court of Appeals. Fol. 7120.

The court erred, in holding that this claim was barred by the third section of the Harter Act in the absence of affirmative proof that the petitioner exercised due diligence to make the steamer in all respects seaworthy and properly manned, equipped and supplied.

The Third Section of the Harter Act provides that "if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners,

agent or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel."

The petitioner failed to comply with the two conditions on which alone this statute could have become applicable to the claim.

a. The petitioner had not exercised due diligence to keep the steamer "properly equipped."

A steamer which has not complied with the statutory requirement as to her boats is not properly equipped. We have already shown, *ante*, p. 132, that the *Bourgogne* had not fulfilled the requirement of the statute in this regard. She did not have a boat and raft capacity sufficient to secure the safety of the persons on board in case of disaster; for she carried 714 persons, and her boats and rafts would float no more than 658. Hence, she was not properly equipped and there is no proof of the exercise of any diligence by the petitioner to have her properly equipped in this regard.

b. The petitioner had not exercised due diligence to keep the *Bourgogne* "seaworthy" and have her "properly manned."

The testimony referred to under the first point, *ante*, pp. 78-85, indicates that the petitioner's steamers, including those commanded by Captain Delonele, were customarily navigated at improper speed in fog. It also shows that on the voyage immediately preceding that on which the

Bourgogne was lost Captain Deloncle had run his ship at full speed during an entire voyage which included two days of fog. *Ante*, pp. 88, 89.

The condition of exemption under the Harter Act is that the owner must have exercised due diligence to have the ship in command of a competent master. Competency to perform a duty includes not only technical skill but also a disposition to use it properly; it implies good habits, fidelity, caution, diligence in the performance of duties, and a proper regard to the requirements of safe navigation in accordance with the International Rules.

In order to have an ocean steamer or any vessel properly manned, she must be in charge of a competent master. *The Cygnet*, 126 F. R., 745; *The Guildhall*, 58 F. R., 800; *The Giles Loring*, 48 F. R., 463; *Draper* v. *The Conn. Ins. Co.*, 4 Duer, 234; *Kay on Shipmasters*, Vol. 1, pp. 31 and 87; *Tait* v. *Levy*, 13 East, 481.

When the *Bourgogne* sailed from New York she did not have a competent master, within the requirements of the law. It is not sufficient to establish competency in a master to prove merely that he has skill in navigation. In the case of *Coppins* v. *The New York Central R. R. Co.*, 122 N. Y., 564, the New York Court of Appeals has given a definition of what is meant by a competent man as follows:

"A competent man is a reliable man, one who may be *relied on to execute the rules of the*

owners, unless prevented by causes beyond his control. Hence, incompetency exists not alone in the physical or moral attributes, but in the disposition with which the servant performs his duties. *If he habitually neglects those duties he becomes unreliable,* although he may be physically and mentally able to do well all that is required of him. His *disposition towards his work,* toward the general safety of the work of his employers and of his fellow servants *makes him an incompetent.*"

Instead of having in command of the *Bourgogne* a master who could be "relied on to execute the rules" of the company, it had a master in command who, as it knew, could be relied on *not* to execute those rules, that is, if those rules required that his ship should go at moderate speed in a fog, and not to obey the law on that subject.

If, therefore, in order that the *Bourgogne* should be "properly manned," it was necessary that she should have a competent master—a reliable man who could be relied on to execute the rules of the company and to obey the law—it is manifest that she was not properly manned.

The petitioner is under the burden of establishing the competency of the master, or that it used due diligence to have a competent man in charge, by affirmative proof. *The Wildcroft,* 201 U. S., 378.

The petitioner has not offered proof that it exercised due diligence to have and to keep a competent master in charge of the steamer. It was bound to exercise such diligence originally and to use, in the supervision of the master's conduct, the degree of care that was necessary to make

sure that he was discharging his duties in a competent manner. *Whittaker* v. *Delaware & Hudson Canal Co.*, 126 N. Y., 544, 549, 550.

All that appears on the question of diligence is contained in the testimony of Mr. Simon, the former Superintendent of the Company at Havre, who had charge of the outfitting of the *Bourgogne*. Fols. 1407, 1408. He states that the Captain had been in the service of the petitioner about two years, had made three voyages on the *Bourgogne*, and had formerly been a lieutenant in the French Navy. Fol. 1410. He further stated that Captain Deloncle's qualifications as a navigator were complete, fol. 1411, that he was one of the best commanders in the company, fol. 1412, and that no question had ever been raised as to the Captain's proper character and competency. Fol. 1412. He does not, however, say that he made any inquiries as to Captain Deloncle's qualifications other than his ability as a navigator. He had not examined any of Captain Deloncle's log books, fols. 1429, 1430, so he had no means of knowing whether or not Captain Deloncle had navigated the ship in a competent manner in foggy weather. Mr. Simon nowhere says that Captain Deloncle was competent.

The petitioner refused to produce the log-books that would have shown the practices followed in navigation during fog on Captain Deloncle's previous voyages. *Ante,* p. 121. It cannot, therefore, be presumed that he obeyed the rules any more loyally then, than he did on the voyage here in question. *Ante,* pp. 124-129.

The case, so far as regards this claim, seems to be within the rule laid down by the Court of Appeals for the First Circuit, in the case of *The Cygnet,* 126 Fed. Rep., 742, 746, where Putnam, *J.*, at p. 746, said:

"There is no evidence in the record that the owners of the tug, either the record owners or the owner *pro hac vice,* had made any particular *inquiries as to his competency.* The petitioners seem to think it is sufficient to maintain their case that the owner or owners had no knowledge or reason to believe that the master was not competent; but this form of statement is not sufficient, because it does not comply with the statute, which requires 'due diligence.' "

It appeared in that case that the master attempted to take a long tow on a hawser between the piers of a bridge, where, although the passage was narrow, and the exercise of great care was required, he proceeded at full speed, and kept on a course not in line with the passage until within 150 feet of the bridge, when he changed the course of his tug and entered the passage before the tow was straightened out, without looking to ascertain her position, the result being that the barge collided with the pier.

With reference to these facts the Court further stated, at p. 746:

"An omission so gross as this raises so strong a presumption of fact that the master was not competent as practically to throw the burden on the petitioners to establish the proposition that they used due diligence with reference to his selection, whether the statute does or not impose

such a burden. Yet the other facts which appear in the record, so far from meeting this presumption, strengthen it. We are therefore not satisfied that whoever controlled the tug used the due diligence which the statute required in the selection of this master, necessary to justify us in relieving her from the liability for this loss which the common law imposed as the result of gross negligence at the critical time."

The foregoing views were approved and applied by the Court of Appeals for the Ninth Circuit in *McGill* v. *Michigan Steamship Company*, 144 Fed. Rep., 748, 795, 796.

Unless this Court should hold that a vessel which has not complied with the statutory requirements as to boats, and has not equipped its vessel with the means of saving the lives of passengers, in case of disaster, is, nevertheless, properly "equipped," and unless the Court should hold further that the owner's duty to make the ship "seaworthy" and have her properly "manned" is satisfied by furnishing a master who habitually violates the laws of navigation, the petitioner cannot shield itself, under the exemptions of the Harter Act, against this claim.

If, notwithstanding the arguments presented under the previous Points of this brief, the petitioner's claim to a limitation of liability should be sustained, the petitioner should nevertheless be compelled to account for two further items of freight, which the Court of Appeals decided it might keep.

FOURTH POINT.

THE VOYAGE OF LA BOURGOGNE ON WHICH SHE WAS SUNK WAS A ROUND VOYAGE FROM HAVRE, HER HOME PORT, OUT TO NEW YORK AND BACK TO HAVRE, AND THE "FREIGHT FOR THE VOYAGE," WITHIN THE MEANING OF THE LIMITATION OF LIABILITY ACTS, IS ALL THE FREIGHT RECEIVED FOR THE WHOLE ROUND VOYAGE, AND NOT MERELY THE FREIGHT FOR THE HALF VOYAGE, OR PASSAGE BACK FROM NEW YORK TO HAVRE.

Section 4283 of the Revised Statutes limits the ship-owner's liability for losses that occur without the privity or knowledge of such owner to "the amount or value of the interest of such owner in such vessel and her freight then pending" and Section 4284 provides that whenever loss is suffered by several freighters on the same voyage "and the whole value of the vessel, and her *freight for the voyage* is not sufficient to make compensation to each of them they shall receive compensation from the owner of the vessel in proportion to their respective losses."

The words "freight then pending" in Sec. 4283, and the words "freight for the voyage" in Sec. 4284, are synonymous, and include all the earnings of the voyage. *The Main*, 152 U. S., 122, 131.

The Circuit Court of Appeals held that the crossing from New York to Havre was the "voyage" of the *Bourgogne*, and that the freight and passage money for that crossing only should

be paid to the trustee. Fol. 7133. This, we assert, was error.

We claim that the voyage here in question was a round voyage from Havre to New York and back to Havre, and that, accordingly, the petitioner must account for the freight earned on the passage from Havre to New York, amounting to 58,578 francs, or $11,715 as a part of the "freight for the voyage."

The word "voyage" is a somewhat flexible term. In dictionaries and in legal decisions, it has been used to describe different things.

The Standard Dictionary defines voyage as:

"Specifically the outward and homeward passage of a vessel taken together; the whole course of a vessel before reaching her home port."

Parsons on Shipping and Admiralty, p. 307, speaks of a "double voyage out and home."

In *In Re George Moncan*, 8 Sawyer, 353, the Court said that "a voyage is not limited to the passage of a vessel from one port to another, but it may include several ports."

In *Friend* v. *Gloucester Insurance Company*, 113 Mass., 326, 332, Morton, *J.*, said that by voyage is meant "the *enterprise entered upon* and not merely the route."

In *Whitcomb* v. *Emerson*, 50 Fed. Rep., 128, 129, Nelson *J.*, in dealing with the amount of freight to be surrendered by a fishing vessel said:

"The season's cruising is to be accounted as a single voyage, and the earnings during the whole

season's fishing are equally with the vessel liable for debts contracted on the vessel's account."

In *The Giles Loring*, 48 Fed Rep., 463, Webb, *J.*, found that the voyage contemplated was from a port in the United States to the West Coast of Africa and return, and held that the freight earned on the outward passage from the United States to the West Coast of Africa must be surrendered in limitation of liabilities incurred on the homeward passage.

In *Cohen's Admiralty Law*, p. 235, the author says that "a voyage is a transit to be performed by the seamen." In this sense a voyage would very generally be a round voyage and not merely a single trip. Thus, in *The Martha*, Blatchf. & H., 151, a round trip from New Orleans to La Guayra, thence to a port in Europe and back to a port in the United States was held to be a voyage; in *Granon* v. *Hartshorn*, Blatchf. & H., 454, a round trip from New York to Liverpool and back was held to be a voyage; in *The Cadmus*, Blatchf. & H., 139, a round trip from Boston to the West Indies and return was held to be the voyage; and in *Mitchell* v. *United States*, 96 U. S., 162, a round trip from New York to New Orleans and return was held to be the voyage.

In *The Steamship Carisbrook Company* v. *The London and Provincial Marine Insurance Co.*, [1901] 2 K. B., 861, it appeared that a ship had been chartered to proceed from an English or German port, to Savannah, and there load a cargo for a British or Continent port, freight to be paid on the unloading and right delivery of the

cargo. While the ship was proceeding in ballast from an English port to Savannah she grounded, and a general average sacrifice was made. She subsequently continued on her voyage, loaded her cargo, delivered it, and received the freight. It was held that the outward passage in ballast on which the sacrifice occurred was a part of the round voyage on which the freight was earned, and that accordingly the charter freight was liable to contribute to the general average sacrifice. Mathew, *J.*, at p. 864, said:

"The charter obliged her to go to Savannah and bring the cargo home, and she was discharging that obligation when the disaster occurred. Therefore it occurred in the course of the *voyage* contemplated by the charter."

The decision was affirmed on appeal. [1902], 2 K. B., 681.

The cases of *Williamson* v. *London Assurance Co.*, 1 M. & S., 318; 14 R. R., 441; *The Progress*, Edward's Admiralty Reports, 210, 218; *Moran* v. *Jones*, 7 E. & B., 523; *The Brig Mary*, 1 Sprague, 17, are to the same effect.

There is no authority in support of the ruling of the Court below that on the facts the crossing of the *Bourgogne* from Havre to New York was not a part of the voyage in such sense that the freight earned on that crossing should not be surrendered as a part of the freight for the voyage.

The cases referred to by the district judge as authority for his ruling to this effect are not directly in point.

The statements of the learned judge who decided *The Alpena*, 8 Fed. Rep., 283, as to the true meaning of the word "voyage" were not necessary to the decision. The *Alpena* was running "daily trips or voyages between the ports of Chicago and Grand Haven." P. 286. She was lost on October 16, 1880; and in a limitation proceeding instituted after that date the owners sought to limit their liability for a collision that occurred on a previous voyage on September 10, 1880. The question before Judge Blodgett was not whether the voyage of the *Alpena* was only from Chicago to Grand Haven, or was from Chicago to Grand Haven and *back*, but whether, after having made a considerable number of round voyages from Chicago to Grand Haven and back, after the collision, the owner could limit its liability without surrendering the value of the vessel at the end of the voyage on which the collision occurred. It is true that the judge in his opinion expresses the view that "each voyage or trip, each separate journey which the ship makes from one port to another, must be treated as a separate venture," but he also said, "when each voyage is ended it is for the owner to decide whether the losses have been such as to make it expedient for him to invoke the protection given by this Act of Congress. If he does not decide to do this, but sends his ship upon a new voyage, he thereby concedes his personal liability for the damages incurred on the past voyage." It is not altogether clear whether the judge meant by this to treat the round trip

from Chicago to Grand Haven and return as the voyage, or merely the transit one way. He can hardly have meant to say that every passage "from one port to another must be treated as a separate venture," in a literal sense, for, if a vessel were engaged in the coasting trade or on a river where she stopped at a number of ports, it would seem that the freight earned between all the ports would have to be surrendered as freight for the voyage. Cf. *The Giles Loring*, 48 Fed. Rep., 463.

The statement of the district judge that Judge Brown had held, in *The Rose Culkin*, 52 F. R., 332, that "each trip constitutes a voyage," fol. 3735, is an error. The learned judge did not consider what a voyage was in that case, and the word "trip" does not occur in his opinion. The point under consideration was whether a surrender could be made at a time subsequent to the voyage on which the loss occurred; and on a finding that the property to be surrendered had not substantially depreciated, he allowed a surrender to be made some months after the voyage on which the loss occurred. The *Alpena* was cited with approval for the point that a surrender cannot be made on a subsequent voyage if the property has been depreciated or injured in the meantime; but Judge Brown nowhere in his opinion expressed approval or disapproval of what Judge Blodgett said in regard to the meaning of the word "voyage" as used in the statute.

The other cases cited by Judge Townsend are

not cases of limitation of liability. They turn on the meaning of the word "voyage" as used in various maritime documents, and are not closely analogous.

The question here is: What did Congress mean by the word "voyage" in the Statute?

It would seem that Congress cannot have meant that anything less should be taken by the Courts to be the voyage for the purpose of limiting liability, than that which the owner, before the disaster, defined and treated as the voyage. After a disaster the temptation would be great to claim that the "voyage" is less than what had been treated as the voyage before the disaster. Such a construction should not be allowed.

a. The undisputed evidence in this case shows that the petitioner in the conduct of its business had *uniformly treated each voyage as beginning and ending* at Havre.

The petitioner had contracted with the Government of France as to what the voyage should be on these terms:

"Specifications for the exploitation of the Postal Maritime Service *between Havre and New York.*

"ART. 1. The service to be executed includes a weekly line from Havre to New York, *or 52 voyages going and returning* per year.

"The distance to be traveled is 3,130 miles *per crossing* and 6,260 sea miles *per voyage, going and returning.*" Fols. 6657, 6658.

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Moreover, the petitioner in its answers to the interrogatories conclusively proved that the voyage was from Havre to New York and back to Havre.

It was asked if each sailing of each steamer *from Havre to New York and back to Havre was treated as and called one voyage*, fols. 264, 415, and it answered "Yes"; but it added, "The company *considers* each trip as a voyage." Fol. 415. This part of the answer is not in evidence. Fol. 1594.

It was asked if the accounts of *every such voyage from Havre to New York and back to Havre* were kept separate from the accounts of the other voyages, fol. 264, and it answered, "Yes." Fol. 415.

In answer to the 11th interrogatory of Perry and Henuy, fol. 301, it said, fol. 440, that the number of the voyage on which the *Bourgogne* was lost was No. 27, and that the steamer had left New York for Havre; to the same effect: fols. 264, 415.

In answer to the 13th interrogatory, fol. 304, it answered "Yes," fol. 441, to the question whether the compensation and agreement provided for "fifty-two voyages per year from Havre to New York and back to Havre."

If the number of the voyage of the *Bourgogne* was 27,, it is plain that each crossing was not counted as a voyage, because, as Havre was the

starting point, each crossing from Havre to New York would be an odd number, and *each crossing from New York* would be an even number. Therefore the *crossing* from New York could not be No. 27. Moreover, No. 27 could not have been the number of either of the voyages or the crossings of the *Bourgogne* made by her during that year, for she was put out of commission for repair in 1897, fol. 3408, and did not go in commission again till March, 1898, fols. 1352, 3438, four months before she was lost.

Paul Simon, the Marine Superintendent, in testifying as to the inspection of the *Bourgogne*, the certificate of which was put in evidence, fols. 1840 and 3597, says that such a certificate was made "before every *voyage;*" that the certificate was made for the 27th voyage; that the 27th voyage was the one on which she was when she was lost, and that that voyage began in Havre, fol. 1869; and the certificate itself shows this. Fol. 3597.

Simon continually uses the word "voyage" so as to show that the company meant by it not a crossing, but the voyage from Havre to New York and back to Havre. Fols. 1838, 1869, 1874, 1875.

Other testimony is to the same effect.

Capt. Poirot testified that at the end of each voyage he returned to the office of the petitioner one deck log, adding: "There is only one for each *voyage*." Fol. 980.

He had commanded the *Bourgogne* for one voyage. He testified that the vessels keep a separate log for each separate voyage. Fols. 2900, 2915.

"Q. Meaning by that a voyage from Havre to New York and back? A. The log book covers the round trip from Havre to New York and back to Havre. *Those two trips complete one voyage* and each voyage has a separate log book." Fol. 2916.

If each crossing had been considered a voyage he would have returned to the office of the company two logs, one for the outward and one for the homeward crossing. That he only returned one log shows that the "voyage" for which the log was kept was from Havre to New York and back to Havre.

Capt. Fajolle testified to the same effect. Fols. 1114 to 1117.

Simon testified that the crew are shipped for each voyage and are free at the end of the voyage. Fol. 1854.

The situation then is this:

The petitioner ran its vessels under a contract whereby it agreed in specific terms to make 52 voyages between Havre and New York, going and returning, each voyage of 6,260 sea miles, having two crossings of 3,130 sea miles each. It kept the accounts of each such voyage separate from the accounts of every other such voyage. It inspected the steamer and had a certificate of inspection made for each voyage at Havre and the

certificate stated the voyage was No. 27. Fol. 3597. It shipped its crews at Havre for each voyage at the beginning of the voyage. Its captains kept one log for each voyage from Havre to New York and back to Havre. Its captains, its officers and its sailors spoke of going from Havre to New York and back as a voyage. They never spoke of a crossing as a voyage. The number given by the petitioner as the number of the voyage was not the number of this crossing. The petitioner admitted that each voyage from Havre to New York and back to Havre was "*treated as and called*" a voyage and the accounts of it were kept separate.

There is not a particle of evidence in the case to contradict these facts.

The most reasonable construction of the Statute is to give to the word "voyage" in this case the meaning which the petitioner, who is asking the benefit of the Statute, had given to it in the transaction of its business, before the disaster and before the desire for a limitation of liability had arisen to lead the petitioner to claim that another and a more restricted meaning should be given to it.

And as to that meaning, there is no question that the "voyage" in this case had been a voyage whose port of departure was Havre, and whose port of final destination was also Havre.

The word "voyage" in the Statute "should be

so construed as to derogate as little as possible consistently with its phraseology from the otherwise legal rights of the parties." *The Main* v. *Williams*, 152 U. S., p. 132. But for the Statute, the claimants would recover their full damages. Their right to a full recovery can be cut down only by the clear terms of the act, or by a construction of it which cannot be avoided. The facts justify a ruling that the "voyage," here, was the round voyage, and that the freight earned both ways should be surrendered and paid to the claimants.

The opinion of the Circuit Court of Appeals says that "the word 'voyage,' like so many other words, is somewhat elastic. The meaning to be given to it in any particular case is largely dependent *upon the facts* of that case." Fol. 7073.

In this case there is no dispute, discrepancy or inconsistency *in the facts*. All the facts seem to give one and the same meaning to the word

b. The opinion having quoted from the case of *The Main* 152 U. S., 122 the words "the real object of the Act was to limit the liability of vessel owners to *their* interest in *the adventure*", adds, "that is, to the adventure *in which the persons or property transported was put at risk.*" Fol. 7074.

It further says "the fundamental question seems to be this, considering the merchandise and passengers which are shipped as a whole, when does a ship reach a port where such mer-

chandise and passengers are no longer any part of them exposed to the risks of transport by that ship." Fol. 7075.

Of course "the merchandise and passengers," which are to be considered "as a whole," must be *all* merchandise and passengers received on board the ship during any part of "the voyage" from its beginning to its ending. Therefore, this throws no light on the question, "What is the voyage?"

We submit that the Court was in error in considering the risk to merchandise and passengers as the controlling element. When the statute speaks of "the value of the vessel and her freight for the voyage," it is not in any manner referring to any risk to which any *merchandise or passengers* are exposed, but to risks to which the *owner* of the vessel has been exposed, from which he is endeavoring to free himself by turning over to a trustee *his* interest in the vessel and the "freight for the voyage." The voyage here referred to means the owner's voyage. The interest to be surrendered under R. S., §§ 4283-4285 is the amount or value of the interest of such owner in such vessel and her freight then pending.

c. Again, the Court says: "When cargo and passengers are safely landed in New York all their risks of the crossing are over, the adventure *as to them*, and for which they paid freight and passage money, is fully terminated." Fol. 7079.

But the question is not at all when "the adventure" is terminated *as to the cargo and passengers*. The question is, "When does the adventure begin, and when is the adventure terminated as *to the owner of the ship?*" And that question is not at all affected by the termination of the adventure as to any passenger or any piece of cargo.

In *The Scarsdale* [1906,] Probate, 103 a fireman signed articles of agreement for "a voyage not exceeding one year's duration to any ports or places within the limits of 75 degrees north and 60 degrees south latitude, commencing at Cardiff, proceeding thence to Malta, thereafter trading to ports in any rotation, and to end at such port in the United Kingdom or Continent of Europe within home trading limits as may be required by the master." The vessel went from Cardiff to Malta, thence to the Black Sea, and returned to Southampton, where she *discharged her cargo*, and on arrival there the fireman claimed his wages and discharge on the ground that the *voyage was then at an end*. The master required the fireman to go on with the vessel to Cardiff. The Court of Appeal held that the master was entitled to require the fireman to go on to Cardiff, for the discharge of the cargo at Southampton did not terminate the agreement, as the voyage was that of the ship, and not that of the cargo. By giving the master the right to elect as to which of the ports within the limits of the prescribed district should, within the period of twelve months,

be the final port of destination of the ship, the agreement required the fireman to proceed to Cardiff.

Vaughan Williams, L. J., at p. 111, said:

"I can find no words within the four corners of the agreement which would lead me to say that the voyage mentioned in the agreement determined at Southampton *by reason of the discharge of the cargo* then on board the *Scarsdale* at Southampton, a port within the United Kingdom, and, therefore, a port within the limits within which the master is by the agreement entitled to require the voyage to end. The voyage mentioned in the agreement is the *voyage of the ship* and *not of the cargo.*"

Further, at p. 116, the learned judge said:

"I cannot agree that in this agreement the end of the voyage means the place where the final or home passage of the whole voyage terminates by reason that it is the place at which the cargo brought home is to be discharged finally, or that place where the last portion of the cargo is discharged, and the adventure of the ship outward and homeward is at an absolute end, and where she is fully discharged on her return within the home limits.

"The voyage to be ended is the voyage of the ship, not of the cargo. The adventure of the ship outward and homeward does not terminate until the ship returns to the port, within the limits of home trade, where the master elects, within the period of twelve months, mentioned in the voyage agreement, to end her voyage and prepare for a fresh voyage."

Where any liability has arisen against the owner

of a ship during a voyage, that owner, if he desires to limit that liability, must pay over *all* the freight and passage money which have been earnings of that voyage, or of *any part* of it. Whether the risks run by any cargo or passenger, whose freight or passage money became part of such earnings, have or have not terminated, has nothing to do with the question as to what is the voyage, or what must the owner turn over. The owner's risk or his liability has not terminated till the termination of the voyage *as to him*. The question is this, "When did the voyage, the adventure, begin, *as to the owner*, when did it end, *as to the owner*, and what were *his* earnings for that voyage?

The Court further says, "It seems unreasonable to hold that the money thus paid by them [i. e., by cargo and passengers as to which the adventure and the risk has terminated] should be made applicable as a fund for the relief of other cargo and other passengers." Fol. 7079.

If that were the principle of the Statute, each piece of cargo or each passenger injured could call upon the owner to pay to the trustee only the freight or passage money earned from the cargo or passenger *injured*. But the principle of the Statute is the contrary. The owner is required to pay over all freight and passage money received by him as earnings of the voyage, as well freight and passage money received for cargo and passengers *as to whom the risk has ter-*

minated as that received by him from those as to whom the risk *has not terminated*.

Whatever freight and passage money is received from cargo and passengers injured or uninjured, if any, during the whole voyage, *is appropriated* as a fund for the relief of what was injured. And there is nothing "unreasonable" in requiring that it should be so.

The reason, given by the Court for its decision that the passage from Havre to New York was not a part of the voyage, has no connection with the proper answer to this question. The ending of a risk to a passenger or to cargo on *a part* of the voyage has nothing to do with the duty of the owner to pay over the earnings of *the whole voyage*, and that ending does not show that the freight and passage money paid for that part was not a part of the *whole* earnings of the *whole* voyage.

Every fact in the case, upon which facts, as the Court has said, the meaning of the word "voyage" depends, seems to give to the word the meaning "from Havre to New York and back to Havre," and that meaning only.

The Circuit Court of Appeals by its decision has disregarded these facts and has cut this voyage in two and decided that each half was a whole. We urge that it was bound to accept the contract, the statements and the action of the owner, there being no disagreement or inconsistency as to these facts, and that the question, What is "the

voyage" which Congress intends in theAct? has no reference to the ending of the risk of any part of the cargo or any passenger, but to the ending of the liability of the owner for anything that occurs during the "voyage" on which he sent the ship. And this owner sent this ship from Havre on a voyage "from Havre to New York *and back to Havre.*" That, therefore, was the voyage in question, and the limitation of the liability could only be arrived at by adding together all the earnings of every part of that voyage.

If a ship owner should charter his ship for a voyage from New York to Havana, touching at Charleston, Savannah and Key West, could it be held that because he had delivered cargo at Charleston or Savannah, the freight on such cargo was not included in "the earnings of the voyage?" It seems to us impossible, and the result would be the same if the voyage was to the ports named and back to New York. *The Giles Loring*, 48 F. R., 463.

The Circuit Court of Appeals was in error in holding that the freight on cargo received on *La Bourgogne* in Havre and delivered in New York was not included in the earnings of this voyage. The petitioner should be ordered to pay now to the Trustee, as it should have done at the outset, the 58,578.65 francs [$11,715.73] received by it for the trip from Havre to New York, with interest.

FIFTH POINT.

THE COURT BELOW ERRED IN HOLDING THAT THE PROPORTION OF THE ANNUAL MAIL SUBSIDY PAID BY THE FRENCH GOVERNMENT TO THE PETITIONER FOR THE OPERATION OF THE MAIL SERVICE IN RESPECT OF THE VOYAGE ON WHICH THE "BOURGOGNE" WAS LOST WAS NOT "FREIGHT", AND NEED NOT BE ACCOUNTED FOR IN THIS PROCEEDING.

The "freight" to be accounted for in a limitation proceeding is described in Sec. 4283, of the Revised Statutes as the "freight then pending" and in Sec. 4284 as the "freight for the voyage." These words mean all the earnings of the voyage that are actually received.

We maintain that the proportion of the subsidy that was paid for the establishment and operation of the mail service, in respect of the voyage on which the *Bourgogne* was lost, was an earning or gain of the vessel, and, hence, to be regarded as "freight" and accounted for in this proceeding, if the right to a limitation of liability shall be sustained.

a. The petitioner received a subsidy from the French Government for operating a postal service.

The petitioner, in answer to the fourth interrogatory, fol. 260, as to whether there was not an agreement between it and the French Government in relation to the navigation of the *Bourgogne* answered "yes," fol. 414; and it annexed the contract, and the Law of June 24, 1893, in pursuance of which the contract was made. Pp. 2223-2257.

The Law of June 24, 1883, was "*concerning the maritime postal service*: 1, between Havre and New York." Fol. 6648.

Article 1 of the Law authorized the Minister of Posts and Telegraphs "*to let by contract* for the period of 15 years * * * *the carrying of mails* * * *" Fol. 6649. The letting was to be done in two parts, of which the first part was to be for "The service between Havre and New York". Fol. 6650. That service was required to be "*a weekly line*". Fol. 6651. The steamers in the line were to be able to make 17½ knots an hour under forced draft upon their trials, were to "maintain a mean annual speed of at least 15 knots an hour", fol. 6652, and were to have a premium of 12 francs per gross ton for each tenth of a knot of increase in speed above the the required rate. Fols. 6453-6454.

In pursuance of this authority a contract was made between Ad. Cochery, Minister of Posts and Telegraphs, and Eugene Pereire, as President of La Compagnie Generale Transatlantique Aug. 4, 1883, under which the Company was given "the grant during 15 years to date from the 22nd of July, 1886, of the *Maritime Postal Service between Havre and New York*", on agreed conditions, "in consideration of an annual subsidy of Five million four hundred and eighty thousand francs (5,480,000 f.)" [$1,096,000]. P. 2256.

The conditions on which the grant was based are entitled "*Specifications for the operation of*

the Maritime Postal Service between Havre and New York". Fol. 6657.

Article 1 provides:

"The service to be performed comprises a weekly line from Havre to New York, that is, 52 voyges, going and returning a year". Fol. 6658.

In consideration of the subsidy, fol. 7048, the Company agreed to transport without other charge all mail, and postal packages on the Havre-New York line, and all gold, silver and copper coins for the use of the State. Fols. 6660-6661; 7029-7030. The operation of the service was placed under a Commissioner of the Government at Havre, and of postal agents on the routes of navigation. Fol. 6669.

At New York the duties of the Commissioner of the Government were vested in the Consul General of France. Fol. 6669.

The vessels were obliged to carry the postal ensign. Fol. 6668. If there was no postal agent on board, fol. 6696, the captain became responsible for the mails without additional compensation. Fols. 7001-7002. The steamers were required to have a trial speed of 17.5 knots, under forced draft when half laden, and a mean annual speed of 15 knots at the minimum. Fols. 6681, 6683, 6684. A deduction of 8 francs a ton gross was to be made for each tenth of a knot below the required rate of speed, fol. 7024, and a vessel which failed to attain the mean speed of 15 knots for ten consecutive voyages was subject to be rejected as unfit. Fols. 7024, 7026.

The amount due for the service was to be computed "at the end of each annual period, including an aggregate of 52 voyages, going and returning" based on the "result of each crossing". Fol. 7024. Payment of the amount thus ascertained became due at the end of the year, and was to be paid during the following year in monthly instalments. Fol. 7030.

b. The *Bourgogne* was operating under the subsidy and the annual allowance for 1898 covered the voyage on which she was lost.

The *Bourgogne* had been out of commission from sometime in 1897 until March, 1898, for the purpose of having new boilers and engines installed. On the completion of that work she was examined by a "Special Commission of Examination and Acceptance of Postal Steamers," fols. 3405-3406, which certified on May 5, 1898, its conclusion that "the *Bourgogne* satisfies the conditions of the contract, and may be assigned to the postal service upon the New York Line". Fol. 3430. Mr. Simon, the superintendent of the Line testified that the vessel was, in fact, accepted and had resumed service as a postal ship in March, 1898. Fols. 1352, 1353, 1356, 1384.

In answer to the thirteenth interrogatory, fols. 440-1, the petitioner stated that compensation was received from the Government for carrying the mails on the company's steamers, fols. 303,441, and that "in 1898 the company received 5,473,400 francs, *which was the annual allowance.*" Fol. 441. It further stated that the compensation

and agreement "provided for fifty-two voyages per year from Havre to New York, *and back to Havre.*" Fols. 304, 441. It gave the beginning and end of the year in answer to the fifth interrogatory as follows:

"Q. When, with reference to the terms of such agreement, did the year begin and expire in the course of which the voyage of the *Bourgogne* occurred in the course of which she was sunk? A. The year has begun on the 22nd of July, 1897, and closed on the 22nd of July, 1898." Fols. 261, 414, 415.

The voyage on which the *Bourgogne* was lost "was No. 27 for the year 1897-1898." Fols. 264-415.

It is thus admitted by the petitioner that the voyage was one of those for which the subsidy was paid. If captain Deloncle had survived he would have received as his share of the premium for the speed of his ship 42,50 francs per voyage. Fols. 270, 417, 418.

c. The ruling of the Court of Appeals that "this subsidy cannot be considered as freight paid for transportation of the mails, one fifty-second of the whole being arbitrarily apportioned to each round voyage" fol. 7085, is opposed to the weight of authority.

In *The Main*, 152 U. S., 122, 129, Mr. Justice Brown interpreted the word "freight" as follows: "It is to be applied to all rewards, hire or compensations, paid for the use of ships; either for an

entire voyage, one subdivided into sections, or engaged by the month or any period"

The learned justice further said, p. 131:

"There is no reason for giving to the word 'freight' a narrow or technical definition. The fares of the passengers are as much within the reason of the rule as the freight upon the cargo. It would be creating a distinction without a real difference to say that a transatlantic steamer laden with passengers should be wholly exempt from the payment of freight, while another, solely engaged in the carriage of merchandise, should be obliged to pay the entire proceeds of her voyage. The words 'freight pending' in section 4283, or 'freight for the voyage,' section 4284, were copied from the English statute of George II, which, in turn, had taken them from the Marine Ordinance of 1681, and the prior Continental codes; but in both cases they were evidently intended to represent the *earnings* of the voyage, whether from the carriage of passengers or merchandise. If these words were used instead of the words 'freight for the voyage,' it would probably more accurately express the intent of the legislature.

"Nor by the use of the word 'pending' was it intended to limit the recovery to the uncollected freight, or such as had not been completely earned at the time of the disaster. As the object of the statute was to curtail the amount that would otherwise be recoverable, it should not be construed to abridge the rights of the owner of the injured vessel to a greater extent than its language will fairly warrant. This is the view taken in Wilson *v.* Dickson, 2 B. and Ald., 2, 10, in which the court held the words 'freight due or to grow

due' included all the freight for the voyage, whether paid in advance or not."

It would seem that so much of the subsidy as was earned by the *Bourgogne* and paid for the voyage on which she was lost was an "earning" or "gain" to be acounted for under this ruling.

In *O'Brien* v. *Miller*, 168 U. S., 287, 304, the Court quotes, with approval, the following sentence from Kaltenborn: "In the ship are included *all gains arising during the voyage.*" The Court had previously expressed the same idea when, in the case of the *Main*, it said the words "pending freight" and "freight for the voyage" were "evidently intended to represent *the earnings of the voyage.*"

Kent's Commentaries 7th Ed., Vol. III, pp. 279 says: "Freight, in the common acceptation of the term, means the price for the actual transportation of goods by sea from one place to another; but in its more extensive sense it is applied to *all rewards or compensation* paid for the use of ships. * * * "

And one fifty-second part of the amount of 5,473,400 francs paid by the Government of France and received for operating the mail service on 52 voyages going and returning was certainly included in "*all gains*" and "earnings" arising during the voyage of the *Bourgogne*.

The Petitioner received from the Government under the mail contract *for the year in question* 5,473,400 francs, one fifty-second part of which is 105,257 francs, or $21,051.

The Court of Appeals in its opinion on this point says:

"In one sense it may be said that by making each double crossing the steamer making it *earned a part of the whole sum.*" Fol. 7086.

The Court does not suggest and we do not see any ground on which *anything else* could be said. When the steamers, by making fifty-two voyages, earned for their owner a round sum, nothing else can be said except that each steamer, on each voyage, earned a fifty-second part of such round sum.

The Court's opinion proceeds:

"What part it so earned we cannot say;" and again, "It seems impossible to say what fraction of the 5,480,000 francs is to be considered the compensation to any single steamer for undertaking to transport the mails on a single trip from New York to Havre." Fols. 7076, 7077.

Therefore the Court held that the Petitioner might keep the whole.

Now it is perfectly obvious that if there were any fact which afforded ground for claiming that such compensation was anything less than the proportionate part of the whole sum, the burden was upon the Petitioner to prove such fact, and show the Court just why and how that proportionate share should be diminished. In the absence of proof of any such fact, the Court should ascertain the share of such compensation by the rule of simple division.

As it is, the situation is this: The Statute al-

lows a limitation of liability to the value of vessel and freight, the freight being the earnings of the vessel for the voyage. The petitioner must prove the value to which his liability is to be limited, and surrender it.

But the Circuit Court of Appeals has held that if there is a part of such value, of the exact amount of which the petitioner has not furnished evidence to the Court, he is to be allowed to *keep the whole* of that part of such value to himself and still be granted a limitation of his liability to the amount of the value *less such part.*

This is a great injustice to these claimants and by no means in conformity with the view expressed by this Court in the case of *The Main,* 152 U. S., 122, 131: "As the object of the Statute was to curtail the amount what would otherwise be recoverable, it should not be construed to abridge the rights of the injured party to a greater extent than its language will fairly warrant."

Any portion of that payment to the petitioner by the French Government on account of this voyage of the *Bourgogne* must fairly be included in what this Court in *O'Brien* v. *Miller* 168 U. S., 287, 304, speaks of as "all gains arising during the voyage."

The Court of Appeals found two objections to the contention of claimants that a part of the subsidy should be accounted for as "freight" for the voyage within the meaning of R. S. §4284, first, that the subsidy was not given for carrying the mails but was a payment made "to stimulate the

creation and maintenance of a fleet of steamers of a certain class * * * for the promotion of French commerce" fols. 7085-7086; and second, that it could not be apportioned but "must be treated as an entirety." Fol. 7085.

The resumé of the contract that is set forth at the beginning of this Point clearly shows that the subsidy was for the operation of a mail service and for that alone. It is true that the contract provided that in certain contingencies, as the Court remarks, fol. 7087, the Government might impress the steamers and purchase them, or take one or more of them on freight. Fol. 7037. But if such action should be taken, an independent consideration would have to be paid; in one case the purchase price of the vessels, and in the other a rate of freight for their use. The subsidy did not pay for either of these privileges. That was a payment made exclusively for operating the weekly mail service.

The objection that the subsidy cannot be apportioned does not appear to be at all serious. The subsidy was paid for 52 voyages going and returning,—that is for a sailing each way every week in the year. As it was a payment for a series of voyages, a Court of Equity can plainly see that the amount paid for each one is an equal fractional part of the whole.

The objections lose sight of the object that the Court has before it in fixing the amount of the limitation. The design of the statute is to have all the gains of the voyage credited to claimants, and in considering what are gains the Court must

not derogate from claimants' rights to compensation any more than the statute clearly requires. Instead of construing the contract with the French Government liberally in favor of requiring an accounting for all the gains of the voyage, it has interpreted the contract most strictly against the claimants, and has derived a sense from it which the language does not import and which is in fact fictitious. The holding, in effect, is that though the annual subsidy is a payment for fifty-two voyages, it is not a payment for one of the fifty-two.

d. The suggestion of the district judge that the proof did not show that the *Bourgogne* was actually carrying the mails on the voyage on which she was lost, and that, accordingly, it did not appear that any service was performed in respect of mails to which the subsidy could fairly be applied, fol. 3738, was unfounded.

The Court of Appeals did not adopt that view. It assumed that the subsidy had been paid for this voyage of the *Bourgogne*, but held that it could not determine how much of the yearly allowance should be allotted to one of the 52 voyages for which it was paid. Fols. 7085-7088.

It is only necessary to recur to the terms of the contract to see that the suggestion of the district judge is without force. It was not a term of the contract for the subsidy that mails should be carried on every voyage, or on every crossing in each voyage. The contract provided for the maintenance and operation of a weekly line

of steamers which should make fifty-two voyages, going and coming, per annum, on which mails, if shipped, should be carried without additional charge. There was no provision for the abatement of the subsidy if, for any reason, the mails were not put aboard the vessel. The petitioner was required to have the vessels ready to carry the mails in a weekly service, and the accomplishment of the required number of voyages entitled it to the payment of the subsidy.

The petitioner admits that during the year which ended shortly after the steamer was lost, the annual allowance of the subsidy was paid. The question whether the steamer did or did not carry mails on the passage on which she was lost is, therefore, immaterial.

Inasmuch as the petitioner has not furnished to the Court any evidence that the proportionate share of the whole sum received for the fifty-two voyages was not a part of the "gains arising during the voyage," the Court should have included such proportionate share in fixing the amount of the limitation; *i. e.*, one fifty-second part of the annual subsidy, or 105,257 francs, [$21,051] if the "voyage" is held to be the round trip; or one-one hundred and fourth part of it, or 52,628 francs, [$10,525] if the court below was right in the saying that the "voyage" was the homeward passage, with interest.

The Court should have ordered the payment of one fifty-second part of the yearly allowance of the subsidy to the Trustee, as a part of the fund "about which the concourse of the claimants is to be had." *Ex. Parte Slayton*

105 U. S., p. 452. Anything less than that is an injustice to these claimants, and a failure to comply with the conditions on which alone a right to a limitation of liability should be granted. *Norwich* v. *Wright*, 113 U. S., 124.

LAST POINT.

THE DECISION OF THE CIRCUIT COURT OF APPEALS SHOULD BE REVERSED, AND THE CAUSE SHOULD BE REMANDED TO THE DISTRICT COURT, WITH INSTRUCTIONS TO ENTER A DECREE IN FAVOR OF THE CLAIMANTS FOR THE FULL AMOUNT OF THE CLAIMS PROVED, WITH INTEREST AND COSTS, WITH THE PRIVILEGE, TO THE DEATH CLAIMANTS, TO PROVE THEIR CLAIMS IN THIS PROCEEDING, OR BEFORE JURIES, AS THEY MAY ELECT; OR IF THAT BE NOT DONE, THE GRANTING, TO THE PETITIONER, OF A LIMITATION OF LIABILITY, SHOULD BE CONDITIONED ON AN ACTUAL SURRENDER OF THE FREIGHT RECEIVED ON THE ROUND VOYAGE, AND A FIFTY-SECOND PART OF THE ANNUAL SUBSIDY THAT WAS RECEIVED ON ACCOUNT OF THE VOYAGE.

New York, Oct. 19, 1907.

Respectfully submitted,

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A. GORDON MURRAY,
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J. PARKER KIRLIN,
of Counsel.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

LA BOURGOGNE.

In the Matter

of

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE for Limitation of Liability and other purposes, GEORGE DESLIONS, SALLIE M. PERRY, PAULINE HENUY, and Others,

Claimants.

No. 33.

BRIEF FOR CLAIMANTS ON QUESTIONS RAISED UNDER THE CROSS-WRIT OF CERTIORARI.

On December 8, 1907, the court granted the application of La Compagnie Generale Transatlantique for a cross-writ of Certiorari to bring up for consideration certain matters that were not before the court at the hearing under the original writ on November 1st, 1907.

The questions raised under the cross-writ are stated in the petition, at pp. 12, 13, 14, as follows:

"1. The petitioner having transferred its interest in the vessel to a Trustee appointed by the

Court, pursuant to the statute in such case made and provided, is it subject to any further liability, or could its right to the limitation provided by the statute be further questioned in this proceeding, the statute (R. S., Sec. 4285) declaring that from and after such transfer all claims and proceedings against the owner shall cease?

2. Was the first decree of the District Court of the 22nd of March, 1902, a final decree within the meaning of the statute allowing appeals to the Circuit Court of Appeals in the particulars above enumerated, and had the Circuit Court of Appeals jurisdiction to hear and determine such matters?

3. Is and was the petitioner liable to pay into Court the prepaid freight for the voyage from New York to Havre on which the steamship was engaged at the time of the disaster?

4. Is and was the petitioner liable to pay interest at the rate of six per cent. per annum upon the said prepaid freight and passage money from the day of the disaster, the District Court having decided that such prepaid freight and passage money should not be paid in, and that the petitioner was not liable for the same in any case?

5. Is and was the petitioner liable for loss of life on the high seas and out of the jurisdiction of any particular State, and should such claims be considered by the Commissioner?

6. Were the several awards of the claimants by the Commissioner proper awards of damage; and especially in the case of George Deslions, in which there was a disagreement among the Judges of the Circuit Court of Appeals? This point was duly raised by the exceptions to the Commissioner's report filed by the petitioner.

7. Is the limitation of liability to One hundred

dollars ($100.00), contained in the contract of passage of your petitioner, for loss of baggage and personal effects, a good and valid limitation of liability in law?"

These points will be considered in the order stated.

I.

The contention that after the alleged transfer of the petitioner's interest to a trustee the claimants were without right to urge that a complete and lawful transfer had not been made, and that the accident did not occur without the privity or knowledge of the petitioner, does not seem to require extended argument.

We have argued in the original brief for the claimants the point that the petitioner did not make a complete surrender of its interest in the vessel, and that it failed to pay to the trustee, or to give a bond for, its interest in the freight for the voyage. *Brief for Claimants*, pp. 145, 151.

The petitioner relies on *The Scotland*, 105 U. S., 24, 34, as a justification for its action in holding on to the freight while it litigated the question whether or not it was bound to account therefor. But that case was, in reality, an action *in personam*, in which the respondent, the owner of the *Scotland*, had *given security* for the full amount of the claim, and pleaded the right to a limitation in its answer. What the court said about the matter of the freight, in that case, was

in respect of a fund that had been properly secured for distribution.

It is not the intent of Section 4285 to prevent claimants from prosecuting their rights in a limitation proceeding. Its purpose is merely to stop proceedings in any other forum in relation to the subject matter of the limitation proceeding, provided the conditions of the section have been complied with.

II.

The petitioner, in its original brief, and the claimants in their reply brief, have fully considered the question as to the alleged finality of the decree of March 22, 1902, and the correctness of the practice of the claimants *and of the petitioner* in taking their appeals from the decree of July 11, 1904.

The petitioner took no appeal from the decree of March 22, 1902. It did appeal from the decree of July 11, 1904.

The questions raised by the appeal of the claimants from the decree of July 11, 1904, having been heard, the court, by allowing the cross-writ, permits the petitioner to be heard on its own appeal from that decree. Among the questions to be argued there are several, including that of the fault of the *Bourgogne,* which were dealt with in the interlocutory decree, and finally determined in the decree of July 11, 1904. In these circumstances it does not seem to us to be necessary to present any further argument on the question that the

appeals of both parties were from the final decree and were seasonable.

III.

An argument was presented in the original brief for the claimants that the freight to be accounted for was the freight for the whole voyage from Havre to New York, and return, including the subsidy earned on the round trip. *Brief*, pp. 159-189. The Court of Appeals held that the freight and passage money for the passage from New York to Havre should be surrendered. It found that the earnings on that passage had been received, and held on the authority of the *Corona*, *Pacific Coast Company* v. *Reynolds*, 114 F. R., 877; certiorari denied, 187 U. S., 640, that the petitioner showed account therefor. The earnings for that part of the voyage were clearly freight pending within the rule stated in *The Main*, 152 U. S., 122, whatever view may be taken as to freight the other way and the subsidy.

The tickets issued to passengers contained the provision that the pasage money should be paid in full before the departure of the steamer, and should at all events belong to the Company. Fol. 3254. The bills of lading that were issued for cargo contained stipulations providing that freight prepaid would not be returned goods lost or not lost. Fols. 3229, 3231, 3230, 3233.

The case, therefore, falls within the rule stated

in *Pacific Coast Company* v. *Reynolds,* 114 F. R., at p. 82, where the court said:

"As, therefore, the passage money in question was prepaid under an express agreement that the owner of the ship should not refund it, notwithstanding a failure to deliver the passengers at the place of destination, we think it clear that it must be regarded as earned."

The petitioner admitted in answer to interrogatories that it had collected the prepaid freight and passage money amounting to f. 113,419.57. Fols. 304, 305, 306, 441, 442. The ruling of the Court of Appeals that it was bound to account for those amounts of freight and passage money, at the least, can hardly be open to serious controversy. Fols. 7071-7072.

IV.

The petitioner is liable, in any event, to pay interest at the rate of six per cent. on the prepaid freight and passage money from the day of the disaster.

It can hardly be material on this point that the District Court made an error in determining that the prepaid freight and passage money need not be accounted for. The initial error was committed by the petitioner who failed to surrender the freight or to give security for it when it filed its petition. In the ordinary course of proceedings the petitioner would have made such a surrender or secured the freight by a bond, and would afterwards have contested its obligation to

account therefor. In either event, the fund would have been earning interest.

As the case stands, the petitioner has wrongfully and improperly retained the freight in its own possession and has had the use of it throughout the period of the litigation. The Court of Appeals has adjudged that it is bound to account for the New York-Havre freight and passage money. That ruling carries with it the requirement that the petitioner must pay interest on the fund at the legal rate of interest in the State of New York or damages from the time of the disaster until the final decree.

It is the usual practice that a petitioner, who does not surrender the limitation fund to a trustee, but gives a bond for it, and is subsequently called on to pay over the money, must pay legal interest on the fund from the time of the disaster. Interest from that date becomes a part of the sum to be accounted for. *The Favorite*, 12 Fed Rep., 213, 215 and cases cited; *The Wanata*, 95 U. S., 500.

It would be a strange anomaly to hold that a petitioner from whose reluctant grasp the limitation fund is finally wrested by a final decree, should be exonerated from a liability to pay interest, which would have existed if he had given a bond for it, at the start, in accordance with good practice.

V.

The petitioner should be held liable for the death claims on the present record, or the question of the right to recover on them should be left to a reference.

The death claimants have never really had their day in court on the question of their right to recover damages under the law of France.

Rule 78 of the district court which was quoted in our Reply Brief, at p. 3, merely required that notice of claims should be presented to the Commissioner by affidavit. The usual practice then is for the Court to hear the two questions raised by the petitioner in its petition,—that is, of liability, and the right to a limitation thereof,—and remit the matter of the proof and establishment of claims to the Commissioner.

The petition set forth a long list of death claims that had been put in suit, or otherwise presented to it. Pp. 10-30. There is, however, no suggestion in the petition itself that such claims were not good and enforceable, provided the *Bourgogne* should be found to blame.

The claims presented to the Commissioner rested the right of recovery on the French law; eg. 116, fols. 189, 200, 209, 217, 224; all were in substantially the same form. But under the practice under Rule 78 of the district court the claimants were not called on to prove the averments of the claims until after the fault of the petitioner for the collision was determined, and its right to a limitation allowed or denied.

The petitioner had succeeded, however, in obtaining a ruling in *Rundell* v. *La Compagnie &c.*, 100 F. R., 655, that the case fell under the maritime law, rather than the French law, and it accordingly urged on the district judge, before whom the matter was not fully tried, the binding force of that decision. The judge held that the question was an academic one, under his rulings, but formally disposed of it on the authority of the *Rundell* case. P. 1263. He did not decide nor consider the effect of French law on the case.

The Court of Appeals decided that a right of recovery clearly exists under the French law. The opinion states that the right under that law was not only fully established by the record but also was *not disputed* in the Court of Appeals. P. 7089, 7090.

The death claimants who represented passengers on the *Bourgogne* started actions against the French Company in the State Courts of New York, and of other states. Their actions were begun within the periods of limitation established by the law of the forum. The limitation proceedings brought all the claims into the Admiralty Court.

The only question remaining for consideration, therefore, is, does the French law give a right of action against a common carrier for negligently causing the death of a passenger, on the high seas, and if so, can it be enforced by the legal representatives or next of kin of the passenger in a limitation proceeding instituted in our Courts?

The petitioner admits that the right to recover damages for the death of passengers is to be sought for under French law. It will, no doubt, concede that if the *Bourgogne* was in fault, and an action had been brought within the time permitted, a right of recovery would be found under the French law. We understand that its reasons for contending that there can be no right of recovery on death claims, in this proceeding, is, first, that if the French law is resorted to at all it must be taken as a whole, and if so taken, it would not support such a right, because under it, in a case tried in France, the *Bourgogne* has been held free from blame, and second, the claims were not filed in this proceeding within the time allowed under that law.

The claimants maintain that resort is had to the French law only for the purpose of ascertaining whether it affords a substantive right of action for negligently causing the death of the passengers, on the high seas, and if so, whether the right is available to the legal representatives or next of kin of the passengers? The substantive right only is to be derived from the French law; all matters appertaining to the remedies for enforcing the right, in our courts, are determinable by the law of the forum.

The rule as approved by this Court in *Northern Pacific Ry. Co.* v. *Babcock*, 154 U. S., 190, 197, is as follows:

"The statute of another state has, of course no extra-territorial force, but rights acquired under

it will always, in comity, be enforced, if not against the public policy of the laws of the former. In such cases the law of the place where the right was acquired, or the liability was incurred, will govern as to the *right of action;* while all that pertains merely to the *remedy* will be controlled by the law of the state where the action is brought."

The Court had previously decided in *Huntington* v. *Atrill,* 146 U. S., 657, 670, that "by our law, a private action may be maintained in one state, if not contrary to its own policy, for such a wrong done in another and actionable there, although a like wrong would not be actionable in the state where the suit is brought." The absence of any right of action in such cases, under our general maritime law, is not, therefore, a reason for refusing to enforce any cause of action that may exist under the French law.

The foregoing cases answer both the petitioner's objections to the effort of the claimants to find a right of action for death by negligenec under the French law, without regard to what the French law would decide as to the fault of the steamer, or what its statute of limitations may be.

There is no force in the contention that the *Bourgogne* would not be liable, under the French law, for the claims here in controversy, or that the question of her fault for the collision should be determined with reference to the French law. The question of the fault of the *Bourgogne* is one of *general law,* and not of French law.

The rules for the prevention of collisions are the common law of the sea. The petitioner has invoked the protection of the courts of the United States against claims arising out of a collision on the high seas. The courts whose jurisdiction is thus invoked must decide the question of fault according to the law which they administer to the extent that such law may be competent to afford a remedy. The general maritime law affords the rule for determining the question of fault.

It is not clear that the French law is any different from our own on this subject; but if it were so, our courts could not bow to the French ruling in a matter of general law, which they are competent to administer. The only reason for resorting to the French law dealing with the question of liability of a French shipowner for deaths caused by its tort on the high seas, is that the maritime law affords no right of action for such a loss. The admiralty court, in such a case, enforces the law which was in force at the place where the tort was committed.

The petitioner contends that the case of *Widow Resal* against *La Compagnie Generale Transatlantique*, *Record* pp. 1233, 1222, 1231, should be regarded as a ruling that the *Bourgogne* was not in fault for the collision. That was an action by the widow of a passenger to recover damages by virtue of her personal right or that which belonged to her minor children under Section 1382 of the Civil Code of France, p. 1091, by reason of the fault of the steamer causing his death.

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The Court of first instance awarded damages to the widow Resal "in her various characters" in the sum of f. 100,000 subject to the right of the Company to make an abandonment, in pursuance of Article 216 of the Code of Commerce.

The Court of Appeals, *Record* p. 1222, and the Court of Cessation, though not denying, but apparently recognizing a right of action in the widow and children, if fault on the part of the steamer should be established, held, on the facts that were proved in that proceeding, that the steamship was not in fault. *Record*, p. 1231.

This amounts to no more than a finding by the French court on a particular state of facts not fully disclosed that the steamship was not in fault for the collision.

None of the claimants in the present limitation proceeding was a party to the decision of the *Widow Resal* against *La Compagnie Generale Transatlantique*. The decision in that case was *res inter alios acta* as to them. It should have no effect on the ruling to be applied by the courts of this country, whose jurisdiction is invoked, to the facts which have been proved in this proceeding. The facts showing the grave fault of the steamer, as to her speed in the fog, are collated, briefly, in claimant's original brief, pp. 49-53.

It has been suggested by the petitioner that claims for loss of life would be barred in France after the period of one year from the date of the disaster, under the French statute of limitations for the beginning of collision actions, p. 1029, and

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that such limitation should be applied to the present proceeding. It is not clear that this section of the code of commerce applies to actions for death. But whether that be so or not the contention is contrary to the usual rule that provisions of the foreign law relating to the *remedy* are not enforced by courts which may be called on to enforce the substantive provisions of such law.

As a matter of fact, a number, if not all of the death claims involved in this proceeding were put in suit within the period of a year after the collision. The record does not show that they were not all put in suit within that period. There is no basis in the record for any contention by the petitioner that the claims would have been barred by the French statute of limitation. Of course, the claims could not be brought forward in the present proceeding within the period of one year, because the petition itself was not filed until nearly two years after the disaster.

Under the statutes of New York a claim of this nature could be brought against a resident at any time within two years after the accident. The petition, filed about 22 months thereafter, shows that life claims had theretofore been presented and many of them put in suit. There is no suggestion that they were not put in time seasonably either under the French or American law.

We come then to consider what right of action exists, under French law, to recover damages for

death caused by negligence on a French ship on the high seas.

Such a right exists under Sections 1382, 1383, and 1384, of the Civil Code of France, pp. 1091, 1092, and under Section 216 of the Code of Commerce.

"1382. Tout fait quelconque de l'homme, qui cause a autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer.

1383. Chacun est responsable du dommage qu'il a causé non-seulement par son fait, mais encore par se négligence ou par son imprudence.

1384. On est responsable non-seulement du dommage qui l'on cause par son propre fait, mais encore de celui qui est causé par le fait, des personnes dont on doit répondre, ou des choses que l'on a sous sa garde. Le père et la mère après le decès du mari, sont responsables du dommage causé par leurs enfants mineurs habitant avec eux;—Les maîtres et les commettants, du dommage causé par leurs domestiques et préposés dans les fonctions auxquels ils les ont employés;—Les instituteurs et les artisans, du dommage causé par leurs élèves et apprentis pendant le temps qu'il sont sous leur surveillance. La responsabilité ci-dessus a lieu, a moins que les pères et mères, instituteurs et artisans ne prouvent qu'ils n'ont pu empecher le fait qui donne lieu à cette responsabilité.

A translation of these sections is:

Sec. 1382. Every action whatever of man, which causes damage to another, binds him by whose fault it has happened, to repair it.

1383. Every one is responsible for the damage

which he has caused, not only by his act, but also by his negligence or by his imprudence.

1384. One is responsible not only for the damage which one causes by one's own act, but furthermore for that which is caused by the act of persons for whom one might answer, or of things which one has under one's control. The father and the mother, after the decease of the husband are responsible for the damage caused by their minor children dwelling with them; masters and employers for the damage caused by their domestics and employees in the functions for which they have employed them; teachers and artisans for the damage caused by their pupils and apprentices during the term that they are under their watchfulness. The above responsibility exists unless the father and mother, teachers and artisans prove that they have not been able to prevent the act which gives ground for this responsibility.

SEC. 216 of the Code of Commerce provides as follows:

"Tout propriétaire de navire est civilement responsable des faits du capitaine, et tenu des engagements contractés par ce dernier, pour ce qui est relatif au navire et à l'expédition. Il peut, dans tous les cas, s'affranchir des obligations ci-dessus par l'abandon du navire et du fret. Toutefois la faculté de faire abandon n'est point accordée à celui qui est en même temps capitaine et propriétaire ou co-propriétaire du navire. Lorsque le capitaine ne sera que co-propriétaire, il ne sera responsable des engagements contractés par lui, pour ce qui est relatif au navire et à l'expédition que dans la proportion de son intérêt."

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A part of this section is quoted in petitioner's original brief at p. 56. We quote the entire section from 1 *Valroger Droit Maritime*, p. 276.

A translation of the section follows:

"Every owner of a vessel is responsible civilly for the acts of the captain, and held to the engagements made by the latter relative to the vessel and to the voyage. He may in all cases relieve himself from the foregoing obligations by abandoning the vessel and freight. The privilege of making an abandonment is not accorded to one who is at the same time the captain and owner or co-owner of the vessel. When the captain is only a co-owner he shall not be responsible for the engagements contracted by him relative to the vessel or the voyage except in the proportion of his interest."

In Sections 206, 294, and 295, of Fremont's *Code de l'Abordage*, which is in evidence, *Record*, pp. 1092-1094, it is stated that "On the high seas all ships of war or of commerce are considered as a part of the territory, which has displaced itself, and which is ever dominated by the sovereignty of the state whose flag they carry. In consequence, everything which occurs on board is considered as done upon the national territory, whoever may be the authors or victims of it." P. 1094. It is further stated that "The owner of a ship can be condemned in damages, not only as against the shippers of a cargo damaged or lost by imprudence, but furthermore as against the widows or children of sailors who died in the ship-

wreck which followed the collision." Reference is made in a note to Section 294 to a case decided at Poitiers, Feb. 23, 1876, reported in Sirey, 1876, 2, 214, and Dalloz, 1876, 2, 132. That was the decision of the case in the Court of Appeals, and was there entitled *D'Orbigny, Faustin and Rouet* v. *Widow Guerin*. The facts were that

On the 10th of February, 1875, at 25 minutes past seven o'clock in the evening, the steam vessels the *Rochelois* and the *Normand*, both belonging to the commercial house of D'Orbigny & Faustin's Son, employed in the fishing business, left together the port of Rochelle to go upon the fishing ground. The first was captained by Rouet to whom belonged for this day the general command, and the second by Bouteleux, who had on board his vessel Louis-Victor Guérin in the capacity of chief engineer. Toward half past one o'clock, the *Rochelois*, which was in the lead, wished to pass astern of the *Normand*, but there followed, in consequence of this maneuver, a collision, as the result of which the *Normand* was sunk. Five persons, among whom was the chief engineer Guérin, lost their lives in this disaster. The widow of the chief engineer Guérin brought an action against Rouet, the commander of the *Rochelois*, and against D'Orbigny & Faustin's Son, proprietors of this ship, and secured judgment. The Court of La Rochelle speaking of the owner's liability said:

"In that which concerns the shipowners, considering that it is not denied that D'Orbigny and

Faustin had confided to Rouet the charge of the ship *Rochelois*, of which they were the owners, and that it has just been held that it was a maneuver ordered by this captain and accomplished according to his order, which occasioned the collision, the consequences of which give ground for this action; considering that, according to the terms of Art. 1384 of the Civil Code, masters and principals are civilly responsible for damage caused by their domestics and agents without their being able, like father and mother for their children, and teachers and artisans for their pupils or apprentices, to free themselves from this responsibility by proving that they could not prevent the damage; considering that the rule laid down by this article is general, and that it dominates all our legislation; that in what especially concerns maritime affairs it is formally reproduced in Art. 216 of the Code of Commerce, which declares that every proprietor of a ship is civilly responsible for the acts of the captain and bound by the engagements contracted by him in regard to what is relative to the ship and to the expedition, and that the construction of the second paragraph of this article, which limits, in the interests of the adventure, the consequences of the responsibility of the owners, far from restricting the general rule, indicates, on the contrary, that this rule embraces as a whole the acts which the captain does in the exercise of his command;

"Considering that D'Orbigny & Faustin objected in vain that the choice of the owner is not a free one, and that the application of the responsibility to a case of the nature of that which serves as a basis for this action is without precedent among judicial decisions, and that if it be allowed, it would create for ship owners perils

such that many would withdraw from an industry whose development constitutes one of the principal elements of the public prosperity and wealth; considering that it cannot be allowed in effect that, because they are restrained in the interests of a superior rule from confiding the command of their ships to other than men whose skill and capacity have been regularly proven, the ship owners should escape that responsibility which weighs generally upon principals by reason of the acts of their agents; that the claim of the defense on this subject runs counter to the formal text of Art. 221 of the Code of Commerce set forth above, and that we must not lose sight of the fact that, if the appointment is a guaranty of professional capacity, there does not necessarily follow, on the part of those who are appointed, the possession of the moral qualities which the owners have the right to demand from the captains among whom they choose, and that it belongs to them fully to appoint and to revoke according to their will; considering that, on the other hand, even were it shown that none of the victims of maritime disasters has heretofore had the thought of invoking the responsibility of the owners, it would not be legal to conclude therefrom that this responsibility does not exist, because the courts, when they are in possession of a claim for damages, have only to seek whether the protection of the right in the name of which the claim is made is found in the law, and if they find it there, they take no thought of the use or non-use which has been made of this means of protection; considering, finally, that considerations drawn from the general interest, however powerful they may be, ought, if they are found to be in opposition to a legal principle, to be carefully avoided by magistrates, to whom it does not

belong to extend or to restrict the application of the rules written in the Codes, and thus to substitute themselves for the legislator; but that to note how exaggerated are the apprehensions which the demand of the widow Guérin has seemed to arouse, it is sufficient to refer to the text which in every case, and consequently in the gravest case,—namely, that of shipwreck,—authorizes the owner to discharge himself from all responsibility by making to the victims of the disaster the illusory abandonment of the lost ship, while he keeps the insurance money, and thus finds himself covered for the greater part of his loss; considering that it results from what has gone before, that whether we refer to the rules of common law or whether we apply to the cause the special rules of the commercial maritime law, D'Orbigny & Faustin cannot free themselves from the consequences of the responsibility which is entailed upon them by their situation as principals of Captain Rouet, against whom has been found an actionable fault which he committed in the duties for which they had appointed him; considering that it is the law that the author of a *quasi* wrong is held to repair all the damage that he has occasioned and to furnish to the one who has suffered by his fault the equivalent of that of which the fault has deprived him; considering that the wages of Guérin composed all the resources of his family, that they freed his wife from having recourse to personal labor to support herself, and that they assured to the children the means of procuring necessary instruction to put each one of them in the way of supporting himself, until, at least the time of his majority; considering that the court thus finds in the documents of the cause sufficient elements

to measure the amount of the damages to which the plaintiffs are entitled and to determine the best method of protecting their interests.—For these reasons the Court of First Jurisdiction holds Rouet, captain of the steam vessel *Rochelois*, responsible for the death of Louis-Victor Guérin; holds D'Orbigny and Faustin's Son, owners of the *Rochelois*, civilly responsible for the acts of Captain Rouet.

The Court of Appeal at Poitiers affirmed this judgment.

In that case the vessels which were bound to the fishing grounds had left port five and a half hours before the collision and must therefore have been on the high seas at the time of the accident.

A similar decision is referred to in a note to Section 295 of the *Code d' Abordage* as having been decided at Marseilles, Nov. 19, 1852. *Record* p. 1094, but we have not been able to find the report.

The case of *Widow Resal* v. *La Compagnie*, &c., *Record*, pp. 1233, 1222, 1231, is directly in point, and relates to this collision. The Court of First Instance awarded the widow 100,000 francs damages (fol. 3652), for the death of her husband who was a third-class passenger on the *Bourgogne*. The Court of Appeals of Paris reversed the judgment fol. 3677, rejected all the claims made by the widow Resal; on the merits, fol. 3674. She took an appeal to the Court of Cassation, fol. 3677, and in the judgment of that court reciting the grounds upon which the suit is founded mentions a violation of Articles 1148, 1382, 1383, 1384 Civil Code,

fol. 3678. The only question before the Court of Cassation was whether there had been an infraction of Article 4 of the law of the 10th March, 1891, which requires a vessel in collision to stand-by each other after the collision, fols. 3669, 3670, and 3679, and Court decided that even if there was an infraction of the law of 1891 no relation would exist between that fault and the damage complained of, and for that reason the decree appealed from had violated none of the "texts above cited," fol. 3681.

The report of the case in the Civil Tribunal of the Seine, First Chamber, on the 28th of June, 1899, is printed in the *Record*, pp. 1223-1244, and the Court said, "In as much as the action for damages founded upon an accident which has happened to a traveller during the execution of a contract of transportation does not result from a contractual obligation, but that it has its foundation in the principles of common law on the subject of responsibility under the power of which is placed the transportation of passengers. That these principles are exclusively fixed by Article 1382 and following, of the Civil Code, that on the one side the action which they authorized is an action personal to him who suffered from the faults or *quasi* faults in as much as it descends from a right which is peculiar to it and does not take its source either in the person of the victim or in the contract of transportation which the latter had made, that therefore the clause in the passage ticket which Resal had received from the company which

was binding as against it can not be invoked by the defendant against the Widow Resal who has not been party to the contract, and who acts not as having the right of her husband according to the terms of said contract but in virtue of her personal right or that which belongs to her minor children as a consequence of the *quasi* faults which they claim to have suffered," fols. 3685, 3686-7. These judgments were all put in evidence, fols. 2981, 2982.

In *Les Codes Annotes* par MM. Dalloz, Paris, 1874, the authors in Vol. 2, have collated in numbered notes to Sections 1382 and 1383, various instances in which rights of action for death have survived and been prosecuted by the next of kin, when the tort consists of an injury to the person of the deceased, the action is given according to the order of presumed affections instead of the rule, of descent; thus the action belongs first to the widow and children, and in default of such to the other heirs, Note 37. Material and pecuniary damage is not the only kind of injury that will support an action; a moral interest suffices. No. 46. One who by his fault has caused the death of a person may be sued by all those who have subsisted on his aid even though they had no legal right to it, No. 101; D. P. 64, 1, 99. The death of a person in a railway accident gives rise to an action for damages to any person, whether heir or not, who has suffered a direct prejudice from it. No. 105; D. P. 72, 5. 386 a widow father and mother have a right to recover

damages for the death of a husband and son, No. 106; D. P. 72, 5, 386. The owner of a steam vessel, of which a member of the crew perished by reason of the explosion of a boiler, was held liable to the widow and children of the deceased, No. 83, D. P. 55, 2, 86.

There was no contest on this branch of the case in the Lower Court. The Court of Appeals records in its opinion the fact that it was not disputed in that court.

The decision of the Court of Appeals proceeded on the theory that the *lex loci* governed, and that *locus* was a French vessel which constituted a part of the territory of France, on which the French law was in force. *Crapo* v. *Kelly*, 16 Wall., 610, 630, 631; *Wilson* v. *McNamee*, 102 U. S., 572, 574; *McDonald* v. *Mallory*, 77 N. Y., 546; *International Nav. Co.* v. *Lindstrom*, 123 Fed. Rep., 475. *Ex Parte Byers*, 32 Fed. Rep., 404; *In re Moncan*, 14 Fed. Rep., 44; *The Lamington*, 87 Fed. Rep., 750.

The doctrine of the Court of Appeals is also the French doctrine on the subject.

In *Le Droit des Gens*, Pradier-Fodéré's Ed. Paris, 1863, Vol. 1, Livre 1, Chap. XIX, §216. Vattel says: "If children are born on a vessel of a nation, they may be considered born in the territory; for it is natural to consider vessels as portions of its territory especially when they are voyaging on the high seas."[1]

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[1] "Si les enfants sont nés dans un vaisseau de la nation, ils peuvent être réputés nés dans le

Subsequent text writers have repeatedly referred to this statement with approval and reaffirmed the principle that it laid down. I *Kent's Comm.*, 27; *Dana's Wheaton*, p. 169, §109; *Wharton's Conflict of Laws*, §356; *Bluntschli, Le Droit International Codifié*, Livre IV, Subd. 4, §§317, 318.

Bluntschli says:

"Section 317. Vessels are regarded as floating portions of the state to which they belong, and whose flag they are authorized to carry.

"Section 318. When vessels are on the high seas, the sovereignty of the state, whose flag they carry extends to the vessel completely." [1]

Dr. Heffter, in *Das Europäische Volkerreicht*, published at Berlin, 1881, says at Section 78:

"Vessels which different nations send out of their territorial waters on to the high seas are in a certain sense wandering parts of their territory, which, even in the waters of foreign states, do

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territoire: car, il est naturel de considérer les vaisseaux de la nation comme des portions de son territoire, surtout quand ils voguent sur une mer libre." Vattel, Vol. 1, Livre, 1, Chap. XIX, §216.

[1] "§317. Les navires sont regardés comme des portions flottantes de l'Etat dont ils dépendent, et dont ils sont autorisés à porter le pavillon.

§318. Lorsque les navires se trouvent en pleine mer, la souveraineté de l'Etat dont ils portent le pavillon s'étend au navire tout entier."

not lose their nationality so long as the ownership of the vessel is not transferred to a foreigner."[1]

The latest writers on the subject adopt the principle in its entirety, and consider it as being perfectly well established.

Martens, in the French translation of Leo, *Vol. 1, p. 496*, says:

"All vessels which are on the high seas are subjected exclusively to the jurisdiction of their own government" and in *Vol. 2, p. 336:* "All vessels are considered on the high seas as a detached portion of the territory of the state under whose flag they sail. * * * It follows that all juridical transactions (*transactions juridiques*) and also criminal acts which occur on a ship on the high seas, must be examined solely according to the laws of the country to which it belongs. No foreign jurisdiction can exercise its authority therein, whether it concerns a merchant vessel or a ship of war."

Calvo, in *Le Droit International*, *Vol.* 1, p. 552, says:

"As the sovereignty of a state extends over a vessel which carries its flag, it follows that all the prerogatives and all rights inherent in this sovereignty and notably the right of jurisdiction,

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[1] "§78. Die Schiffe, welche die Nationen aus ihren Gewässern in das freie Meer entsenden, sind gerwissermassen davon wandelnde Gebietstheile, welche selbst in fremde Gewässern ihre Nationalität nicht verlieren, so lange das Eigenthum des Schiffes keinem Fremden übertragen ist."

belong to the sovereign state. In the exercise of this jurisdiction, merchant vessels are on the same footing as vessels of war. The vessels are looked upon as floating portions of the territory of the state from which they depend * * * Vessels, whatever they are, remain of necessity under the subjection of the laws and of the government of the country that covers them by its nationality."

To the same effect are the statements of *Despagnet*, in his *Droit International Public*, 3rd edition, Paris, 1905, page 518, chapter 4, Subd. 2, §427, 428,[1] and, of *Bonfils*, 3rd edition, Paris, 1901, chapter 2, §607.[2]

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[1] "428. En pleine mer tous les bâtiments de guerre ou de commerce ne relèvent que de la loi dont ils portent le pavillon, en ce qui concerne les actes accomplis à leur bord. C'est donc la loi du pays auquel ils appartiennent qui devra être observée: 1. Pour les formalités des actes juridiques réalisés sur les navires, notamment des actes de l'Etat civil, d'après la règle *Locus regit actum;* 2. Pour régler les contrats également conclus à bord, toutes les fois qu'il y aura lieu de suivre la lex loci contractûs, suivant le principe ordinaire en matière de conventions; 3. Pour fixer la nationalité d'après le lieu de naissance, l'enfant né à bord en pleine mer devant être considéré comme né dans le pays du navire."

[2] "Les navires de guerre et les navires de commerce, lorsqu'ils se trouvent en pleine mer, en dehors des eaux littorales de tout Etat, sont soumis aux lois civiles et criminelles, aux juridictions civiles, criminelles, administratives, aux autorités publiques des Etats dont ils sont les ressortissants."

Hughes on Admiralty, §§108-111, pp. 194-199, points out that similar rights to recover damages for death caused by negligence exist in nearly all European countries.

The Court of Appeals decided this branch of the case correctly, and its decision should be affirmed.

VI.

The amounts of such of the awards for damages as have been liquidated, were passed on by the commissioner, who saw the witnesses, and both Courts have approved of his findings.

The principal controversy relates to the claim of George Deslions.

In such circumstances this Court will not review the matter of the amount of the awards. *Tighlman* v. *Proctor*, 125 U. S., 136; *Callahan* v. *Myers*, 128 U. S., 617; *Kimberly* v. *Arms Co.*, 129 U. S., 512.; *Davis* v. *Schwartz*, 155 U. S., 636.

The proof is clear that the agreement to carry and to deliver his property at Havre was made.

As to what occurred on the dock at the time of the shipping of the property, the only two witnesses were Mr. Deslions and M. Fagnet, the agent of the Company. Mr. Deslions coming to the dock that morning found that the packages had not been marked to be delivered at Havre. He informed the baggageman that he owned the trunks; that they contained a collection which he wished to exhibit in Havre, and that he wanted the trunks

marked for Havre. The baggageman referred him to Mr. Faguet. He saw Mr. Faguet, told him that he wanted the packages in Havre, and Mr. Faguet, after inquiring, conceded and directed the trunks to be marked to be delivered at Havre. And Mr. Deslions paid the freight therefor, about $40. Fols. 4135, 4136, 4137.

Mr. Deslions testifies, also, that Mr. Faguet asked him what was the contents of those big trunks, and that he told him that it was an Indian collection, Alaskan, and different collections besides, which he intended to exhibit in Havre. He also adds that Mr. Faguet asked what it was worth, and he told him that it was worth a hundred thousand dollars, or more, and could not be bought for any money now. Fols. 4139-4140.

Mr. Faguet says that Deslions did come to him about the trunks, and told him that he wanted them delivered at Havre, and thereupon he directed the baggage-master to register the trunks to Havre. Mr. Faguet says that he does not think that he saw the trunks, but he knew that they weighed about 900 kilos; that Deslions told him so. Fol. 5120.

Mr. Faguet did not testify that he did not ask Deslions what was in the trunks. But he did say, fol. 5114, that Deslions said nothing to him about what was in the trunks, and he said, also, that Mr. Deslions did not say anything to him as to the value of the collection. Fol. 5108.

There are some other slight discrepancies between the two witnesses. But it is not disputed that Mr. Faguet knew that Deslions was applying

to him about trunks weighing nearly a ton, and that Faguet directed those trunks to be marked, so as to be delivered at Havre; and that Deslions paid $40 for the carrying of those trunks to Havre.

The Commissioner accepted Mr. Deslion's statements with reference to this transaction, although he found that these trunks went on board the *Bourgogne* as a part of the baggage of the claimant's wife, fol. 3885, which was the claim of the petitioner's counsel. It appeared by the testimony of Mr. Cauchois, the freight agent of the Company, that it was not an infrequent thing for passengers to desire to take quantities of property as baggage, frequently as much as 2,000 lbs. Fol. 5197. He further says, fol. 5108,

"I have had two or three parties approach me on the dock the morning of sailing, with a truck load of furniture, baggage, &c., saying that they wished to take it as baggage, as they wished to pass it through the Custom House personally on arrival at Havre, and they wished it to accompany them. And, as I know the amount of space left in the ship, I know whether they can take it as baggage. If possible, I let them take it on, and weigh it, and they pay as extra baggage, and we give them a receipt for it."

This action, therefore, of Mr. Faguet, in allowing this ton of property to go on board the *Bourgogne* as baggage was in accordance with the custom of the Company. That Mr. Faguet had authority to make the contract for the transporta-

tion of that property as such, and agreed that it should be delivered at Havre, cannot be denied.

And, if property was so received on board the ship and lost by negligence, there can be no question about the liability of the ship to the owner of the property who has suffered the loss.

Deslions made no concealment of anything. He told Faguet the property was his and Faguet directed its shipment as his.

If the fact that there was a ticket of Deslion's wife made any difference in the contract or the liability of the company, it was Faguet's duty to have found it out and informed Deslions of it. He having said nothing of any such difference then, the company is estopped from making the claim now that any such difference exists.

Taking the evidence of Deslions and of Faguet together, and there is very little difference between them as to what was said between them about the shipment of the trunks, it is clear that Deslions understood that the steamer was taking them as freight, while Faguet understood he was receiving them as baggage.

The Commissioner reported in accordance with Faguet's understanding that the trunks went on board as baggage.

That view of the case calls for the application to the petitioner of the rule of liability applicable to its understanding, which is a rule as to which the petitioner surely cannot complain.

The question on this view would be: What is the liability of the Company for the loss of this property which it received on board as baggage,

for the carrying of which it has been paid, and which it has negligently destroyed?

a. The petitioner claims that the steamship company was not advised of any personal claim of ownership on the part of Deslions.

This is directly contrary to the evidence of both Deslions and Faguet.

I remonstrated with this man (the baggage-man) saying that *as I was the owner of those trunks* I would ship them wherever I pleased. Deslions, fol. 4135.

I said to Faguet * * * "I think I should have the right to direct *my trunks* wherever I want to." Fol. 4136.

Faguet said, "This man has a perfect right to send *his trunks* wherever he wants." Fol. 4137.

I told the baggage-master, "You will register *the trunks of this gentleman* to Havre." Faguet, fol. 5101.

Deslions told me I have some baggage, many packages, the weight is 900 kilos, perhaps. Fol. 5120.

Deslions told me "*my baggage* is registered to Basle." Fol. 5122.

He asked me, "I will have *my baggage* at Havre." Fol. 5131.

b. It is further claimed that although Deslions was the owner of the trunks, and they have been lost by the petitioner's negligence, he has no right to recover his damages because he alleged in his claim that he has made a contract about it and he has not proved a contract.

On the question of pleading the matter stands thus:

The petitioner summoned Deslions into Court alleging that Deslions had begun a suit against it in the Circuit Court of the United States "for loss of personal property." Fol. 42.

Deslions' claim in this proceeding, an entirely informal paper, according to the common and long continued practice of the District Court, alleged that he shipped the property on the steamer under an agreement for a valid consideration that the same should be carried to Havre and there delivered to him or his agents, that the property was totally lost in the collision "hereinbefore mentioned, which collision had been alleged to have occurred by the petitioner's negligence, and has never been delivered according to agreement at Havre." Fol. 132.

And Deslions' answer, his formal pleading, made full charges of negligence against the petitioner as causing the collision.

The claim, therefore, is a claim for damages occasioned to Deslions by petitioner's negligence, which negligence has been found against the petitioner by the Court.

And the proof is that the property was on board with the knowledge of Mr. Faguet, the agent of petitioner, and that he had made the agreement to carry it to Havre for the sum paid.

Mr. Faguet's evidence shows that he saw Deslions on the dock. Deslions told him he wanted to have the baggage at Havre and he told Deslions "All right, &c.," and he told the baggage-master

to register the baggage to Havre. He charged Deslions for extra weight. The weight was about 900 kilos. The passenger was only entitled to take 150 kilos free. Deslions told him the weight. Deslions said, "I will have my baggage at Havre." Fol. 5131. He made the arrangement with reference to the additional amount Deslions was to pay. Deslions told him, "I have an excess of baggage to pay. It is about 800 or 900 kilos." And he told Deslions, "All right, you will pay the extra charge for the baggage." Deslions was not a passenger. Deslions showed him a ticket.

On Faguet's evidence alone, therefore, and still more on Deslion's evidence, there was proved an agreement by the general agent of the petitioner with Deslions to carry this property to Havre and there deliver it for a specified price, which was paid.

And that being so, and the property having been lost and not delivered, the petitioner would be liable.

For that proposition there is abundant authority.

It is sufficient we think to cite the case of *Saleeby* v. *The Central R. R. of New Jersey*, 99 App. Div., 166, in which the Court said:

"There are many cases where a carrier has been held liable for merchandise lost with or without notice of its character; but in such cases it appeared that extra compensation was paid and thus the liability was based upon an independent contract for the transportation of the merchandise as such."

c. But if there were no contract proved between the petitioner and Deslions, still there is no doubt that this property went on board the steamer by special direction of Faguet, and was therefore rightly upon the steamer.

And then we have the case exactly within the language of the Court, in *Meux* v. *Great E. R. Co.*, 73 Law Times Rep., 247.

"Plaintiff has incurred loss by reason of her property having been destroyed by the active negligence of the company, while it was lawfully on the premises of the company. She has, therefore, a right of action, *in tort*, wholly irrespective of contract. Her goods were lawfully on the defendant's premises, and by their active negligence those goods have been damaged. That gives her a good cause of action *in tort*."

Lord Esher, in the same case, stated the law most clearly as follows:

"If the property is placed openly upon the company's premises to be carried, the company knows it is there and allows it to be there, and it must be a wrongful act on the part of the company to do any negligent or wrongful act to it, as for instance, to throw it out. If the railway company takes up such baggage and carries it, the company must do so with reasonable care. Under such circumstances the company is liable if there is no contract, or a contract made with some one other than the owner, if they negligently injure the baggage."

The same rule has been adopted by our Courts. *Grant* v. *Newton*, 1 E. D. Smith, 95; *Trimble* v. *N. Y. Cent. &c., R. R. Co.*, 162 N. Y., 84.

The Commissioner gave to the petitioner the fullest opportunity for contesting the Deslions Claim. Deslions was called as a witness in his own behalf. His direct and redirect testimony occupied 169 folios. His cross and recross-examination occupied 541 folios. A very large part of it was taken up with matters utterly immaterial to the questions in the case.

There were called as witnesses on his behalf ten other witnesses. And ten witnesses were also called for petitioner. The taking of the evidence began on September 25, 1902, and was closed on May 12, 1903.

Two applications were thereafter made by the petitioner to the Commissioner to open the reference for further evidence, and two to Judge Thomas, all of which were denied.

The Commissioner filed his report on May 9, 1904.

Exceptions were filed to the report, which were fully argued before Judge Thomas, and were by him overruled.

The case was heard by the Circuit Court of Appeals and two of the judges of that Court agreed with the Finding of the Commissioners and the District Judge, our Circuit Court Judge dissenting.

In this situation the case is not one in which this court is called on to review the damages.

But if the Court sees fit to examine the evidence, it will find that the Commissioner's Report is well founded.

1. There is no dispute as to these packages going aboard the *Bourgogne*.

The petitioner's counsel proved by the books and papers of the petitioner itself that there were put on board the *Bourgogne* for Deslions, as the result of a conversation on the dock between Deslions and M. Faguet, the Assistant Agent of the Company, acting as General Agent in the absence of M. De Bocande, the regular General Agent, and having his authority, fol. 2505, eight trunks, weighing 952 kilos, which is 2,280 pounds. Fols. 5085, 5097, 5098. It is, therefore, proved that the steamship had on board her about a ton of Deslions' property.

The petitioner complains that Deslions is the only witness to prove the contents of the trunks. Two other witnesses testified to seeing Indian curios in the trunks, the expressman Devoluy, who helped Deslions fix the trunks up with some ropes, fols. 4860, 4867, and Mrs. Roess, Deslions' sister-in-law, who had seen the trunks, helped pack them and knew what was in them, fol. 5808.

But of necessity Deslions must be the only one who could testify specifically that his collection was in the trunks, although Grannell, Alley, Tonnele, Heyward and Grant testified as to what they saw of the collection.

As to the specific articles, Deslions gave as full evidence as anyone could be expected to give in relation to such a quantity of miscellaneous articles.

Two lists of the articles were produced by Des-

lions and were put in evidence by the petitioner.

One of them is printed at fols. 5939 to 5943.

This is erroneously printed as if it was two lists and two different exhibits, whereas it is but one. What is printed in fols. 5939 to 5943 is a continuation of the list and not a separate list, as will be seen by the evidence at fol. 4188.

The other is printed at fols. 4684 to 4694.

The first list was produced by Deslions at his first examination and he was examined about the items of it *seriatim* from fols. 4156 to 4218.

The original and a typewritten copy were present. Only one has been printed, which is at fols. 5934 to 4943.

This list Deslions testified that he made up from memory shortly after the loss of the *Bourgogne*. The petitioner put it in evidence.

On cross-examination at a later date the petitioner's counsel was questioning Deslions about persons with whom he had had dealings, and Deslions said he had at home a book with addresses in it. This book he was requested to bring, and at a subsequent meeting he brought it. And he then testified *in answer to petitioner's counsel* that in that memorandum book he had found a list of the articles which he had, which list he had made before the loss of the *Bourgogne*, in the idea of, perhaps, insuring them, he having been told by a man in the insurance business that he ought to have the collection insured.

This list the petitioner's counsel also put in evidence, and finding some differences between it and the list which Deslions had made up from

memory, examined him about them at great length, with the only result of demonstrating that the two lists were not copies of each other, but were independently made up at different times, the one before the sailing of the *Bourgogne* in the presence of the articles, and the other from memory (fol. 4678).

2. As to the value of the property it is easy to see from the character of the articles that, as the Commissioner has said, "the ascertainment of their value is a very difficult problem."

Besides his own residence Deslions called as witnesses George Bird Grinnell, probably the expert best qualified to speak as to such matters in the country.

He called also John J. White, Jr., owner of a collection of Indian curios; D. H. Haywood, a lawyer, also a collector; D. D. Alley a photographer; and Walter Tonnele also a photographer, and Gordon Hope Grant an artist.

He was able to produce photographs of some of the articles, noticeably, a photograph of a large collection of pipes, Indian and other, which he had loaned for exhibition to the Kit Kat Club, and which had then been photographed.

All these witnesses testified that they had seen the collection or part of it and they agreed in giving a high value to articles that they saw there by reason of their rarity and beauty.

Grinnell. "Larger than any private collection I have seen." Fol. 4788. "Many things very desirable." Fol. 4792. "It could not be dupli-

cated." Fol. 4793. "Such medals usually too valuable for me to purchase." Fol. 4803. To get such a collection of pipes, would cost "a number of thousands of dollars." Fol. 4815. "Rattles very highly prized by the Indians who don't readily part with them—are difficult to obtain—rare." Fol. 4828. "If a man wants a Buffalo hide shield now he can't get one because they don't exist." Fol. 4838.

[A Buffalo hide] "of large value." Fol. 4933. "A very valuable thing." Fol. 4943. "I could say it was worth more than $500 or $600, but I could not say it was worth $1,000 or $1,050" * * * "Exceedingly unusual," (4941) &c., &c.

Heywood. "Generally articles considered valuable for a collector's standpoint—not ordinary tourist's articles." Fol. 5770. "Not for sale at any price." Fol. 5774. "Deslion an authority." Fol. 5779.

Alley. "Not tourist's articles. I have studied pipes for ten years." Fol. 5798. "One pipe there you can't buy for anything. Only way you can get it is to steal it, &c." Fol. 5802.

Tonnele. "He had in his collection things that cost a great deal of money." Fol. 5823. "Previous to that time most of Deslions transactions went through my hands. His collection was absolutely without parallel in my estimation." Fol. 5824.

Grant. "A fine collection of pipes, &c." Fol. 5832." Everything he had with a few exceptions were the very finest I have ever seen." Fol. 5836.

The petitioner called three witnesses on this question Keppler, Joste and Riggs.

Keppler had seen what Deslions had when he lived in Fourth Ave. near 14th St., which was the year of the Chicago Fair, fol. 4266, and hence five years before the loss of the *Bourgogne*, and once or twice after that. He had bought of Deslions property worth $600 to $1,200, fol. 5271, and he gives some values, but mainly of the things which he bought. The things which Deslions would not sell were of course more valuable.

Joste had seen the collection in 1890, eight years before the loss of the *Bourgogne* and had made friendly visits after that. Some articles he put a lower value on than Deslions did and as to others he agreed with him. For instance he valued photographs at from twenty-five cents to a dollar, fol. 5388, which Deslions had valued at fifty cents a piece. Fol. 5934. Many other instances could be pointed out.

Riggs saw the collection once in March, 1898. He said he was there about two hours. Fol. 5641.

But the fact was proved to be otherwise. He called at Deslion's rooms one Sunday morning when Mr. Alley was there waiting to go out on a bicycle excursion with Deslions. Riggs talked with Deslions as he sat there about a proposed barter or exchange of some articles, and sat in a chair by the window, and nowhere else, and was not there at the utmost twenty minutes," *Alley*, fol. 5788 to 5794; *Deslions*, 5866 to 5872, and when he had gone Deslions and Alley went on their excursion, which fixes the occasion and the occurrence in their minds. Riggs could not have made any real examination and valuation of the collec-

tion, and his evidence shows that he did not. But it proves that Deslions had a large quantity of curios.

Although he undertook to put a value on the whole, saying that he thought all he saw was worth only perhaps $1,500, he could only specify the following articles: A squaw dress, two buffalo robes, one child's suit, some bows and arrows, knives and scabbards, two scalps and some pipes, fol. 5642 to 5647, and these he valued at $350.

He says he valued what he saw, as he sat there. Fols. 5748 to 5753. The largest part of what he saw was "commercial stuff," fols. 5592, 5723, "usual mercantile stuff." Fol. 5724.

The impression which he tried to give was that the articles were ordinary articles which could easily be replaced, and were of no special value. Thus he says he saw two buffalo robes, and values them, one at $50 and the other at possibly $150, while Grinnell says more than $500 or $600, as being extremely unusual. Fol. 4944.

The petitioner claims that there is nothing in the record to indicate that claimant had a collection, *as distinguished from a stock of cheap merchandise*, except his references to his collection. In the face of the evidence of Grinnell and the other witnesses who were called, there is no basis for this claim.

Even Keppler, petitioner's witness, who had bought from $600 to $1,200 worth of goods from Deslions, fol. 5271, said Deslions' "collection was

larger than either that I have seen." Fol. 5273.

That the character of the collection was very different from what the petitioner's brief claimed is conclusively proved by the evidence of Grinnell and the other witnesses. *Grinnell*, fols. 4791, 4792, 4793, 4794, 4813, 4815, 4831, 4838, 4843, 4848, 4918, 4920, 4922, 4933, 4937, 4943, 4968, 4978, 4979 to 4988, 4991, 4996; *White*, 5021, 5025, 5030; *Haywood*, 5770 to 5772, 5774; *Alley*, 5896, 5799 to 5803; *Tonnele*, 5823, 5824; *Grant*, 5836 to 5839.

It would take altogether too long to go over all this evidence as to the different articles. We would make, however, two suggestions.

a. Mr. Grinnell was the most expert expert called. He gave valuations of some articles, of others he could not. The valuations which he gave substantially agree with the valuations put on the same articles by Deslions. Hence it is fair to infer that Deslions' valuations as to other articles are reasonable.

Thus Photos—Grinnell, 50c. Deslions, 50c.

Pipes—Grinnell, a number of thousand dollars. Deslions, $3,500.

Warclub—Grinnell, $15 or $20 or $25 apiece. Deslions, $20.

Warbonnet—Grinnell, $50. Deslions, $75.

Leggins—Grinnell, $50. Deslions, $25.

Dancing belts—Grinnell, $25 to $50. Deslions, $25.

Tobacco pouches—Grinnell, $25. Deslions, $25.

Saddlebags—Grinnell, $40 or $50 or $150 or $200. Deslions, $60.

Saddle—Grinnell, $30 or more. Deslions, $50.

Papoose hood—Grinnell, $50 to $75. Deslions, $75.

b. The Commissioner cut down the valuations by half, and both the Courts found that there was no reason for any further reduction.

VII.

The petitioner is not entitled to a limitation of its liability, under its passage ticket, for loss of baggage and personal effects to the sum of $100.

The only form of passenger ticket produced by the petitioner and put in evidence, p. 1217, applies to first and second class passengers. It contains a clause purporting to limit the liability of the company to $100 in respect of first class passengers' baggage, and $60 in respect of the baggage of second class passengers. Fols. 3038. There is no limitation in that form of ticket with regard to third class passengers.

The ticket produced by the petitioner is not shown to have been in use at the date of the loss. It states the address of the petitioner's New York office as 32 Broadway, fol. 3635, while its office at the time of the accident in July, 1898, was at No. 3 Bowling Green. Fol. 3050. The bill of lading given to the S. S. White Dental Company for this voyage also shows the office of the Company to have been at No. 3 Bowling Green. Fol. 3848.

The Commissioner held that no passage ticket containing a contract delivered to the persons on

board the *Burgogne* at the time of the disaster had been proved before him. Fol. 3875. Exceptions to this finding were overruled and the report confirmed by the District Court. Fol. 3856. The Court of Appeals affirmed this finding. Fols. 7157, 7161, 7172.

The Court of Appeals referred to the ticket which was introduced in evidence less than a month before the final hearing, though the case had been pending for more than two years, during which on various occasions the petitioner had refused to produce the form of it, and adverted to the fact that the address on the ticket indicated that it was of recent form. The Court held that the petitioner had it in its power to show beyond question what form of ticket had been given to the passengers, and that in view of its failure to do so the finding of the Commissioner and of the District Court that the ticket had not been proved should be confirmed. Fols. 7161, 7163, 7168.

During the examination of John Perry as a witness, the petitioner was asked to produce a copy of the ticket and refused to do so. Fols. 6307, 6308. Mr. Perry bought the ticket under which the Perry family had sailed, and states that it was a pasteboard bigger than a railroad ticket. Fol. 3337. He did not have his attention called in any way to any stipulation purporting to limit liability. Fols. 6307, 6309. Juliet Cicot, the daughter of Pauline Henny, was a second-class passenger. Fols. 2459, 6179, 6151. No proof has been offered that any particular form of ticket was sold to her.

So far as the claims of first and second-class passengers for loss of baggage are concerned, there is a concurrent finding of the Commissioner and both the courts below that no form of ticket delivered to the passengers on board the *Bourgogne* has been proved. There is, accordingly, no basis for a claim that the liability for baggage should be limited to $100.

No proof has been offered of the form of the third-class passenger tickets, or of any clause in them purporting to limit the liability of that class of pasengers. Mrs. Deslions was a third-class passenger. A number of the claims presented for loss of effects were presented in behalf of third-class passengers. There is no ground, therefore, for any argument that the claims of this class of passengers are subject to limitation as to amount.

If the petitioner had proved that a contract ticket had been sold to the first and second-class passengers limiting liability for the amount of baggage to the sum of $100, it would have been of no force or validity. Such a limitation in respect of first or second-class passengers would be unreasonable and unenforceable. *The Kensington*, 183 U. S., 263; *The Majestic*, 166 U. S., 386; *The New England*, 110 Fed. Rep., 415.

December 23, 1907.

Respectfully submitted,

ROBERT G. BENEDICT,
EDWARD G. BENEDICT,
A. GORDON MURRAY,
Proctors for various Claimants.

J. PARKER KIRLIN,
of Counsel.

SUPREME COURT OF THE UNITED STATES

October Term, 1907.

No. 58.

La Bourgogne.

In the Matter of the Petition
of
La Compagnie Generale Transatlantique for limitation of its liability as owner of the steamship La Bourgogne,

Appellee,

George Desliona; Sallie M. Perry, as Administratrix; John Perry, father, and next of kin; Pauline Henry, as Administratrix; Henry H. Knowles, as Administrator; Louis Dellonde; Enrico Cirri; Arthur L. White, as Executor; Josephine M. Chaunt, as Executrix; and the S. S. White Dental Company,

Claimants-Petitioners for Certiorari.

Supreme Court, U. S.
FILED
NOV. 1 - 1907
JAMES H. McKENNEY,
Clerk.

REPLY BRIEF FOR CLAIMANTS.

ROBERT D. BENEDICT,
EDWARD G. BENEDICT,
Proctors for George Desliona and others.

A. GORDON MURRAY,
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John Perry, and Pauline Henry, Admx.

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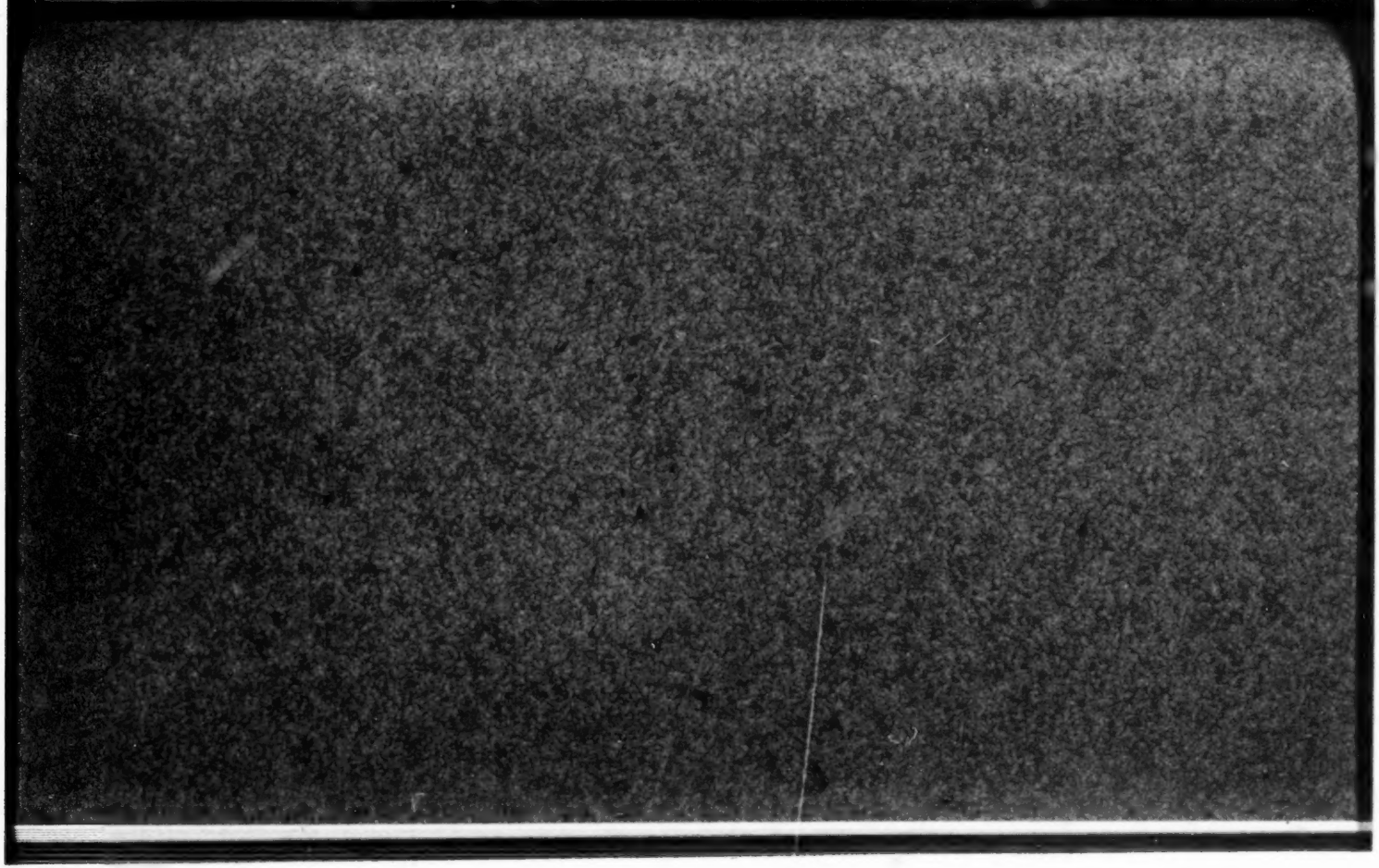

SUPREME COURT OF THE UNITED STATES.

October Term, 1907.

LA BOURGOGNE.

In the Matter of the Petition

of

LA COMPAGNIE GENERALE TRANSATLANTIQUE for limitation of its liability, as owner of the Steamship LA BOURGOGNE,

Appellee,

GEORGE DESLIONS; SALLIE M. PERRY, as Administratrix; JOHN PERRY, father, and next of kin; PAULINE HENUY, as Administratrix; HENRY H. KNOWLES, as Administrator; LOUIS DELFONTE; ENRICO CIRRI; ARTHUR L. WHITE, as Executrix; JOSEPHINE M. CHANUT, as Executrix; and the S. S. WHITE DENTAL COMPANY,

Claimants-Petitioners for Certiorari.

No. 33

REPLY BRIEF FOR CLAIMANTS.

The petitioner has argued certain matters, in its brief, as to which an answer seems to be desirable; and as its counsel have had the claimant's brief for a longer period of time than the rule required, before filing their brief, a reply, by the claimants, may be permitted.

I.

THE POINT THAT THE QUESTION OF THE PETITIONER'S RIGHT TO A LIMITATION OF ITS LIABILITY CANNOT BE RAISED BY AN APPEAL FROM THE FINAL DECREE, AND THAT THE CLAIMANTS SHOULD HAVE APPEALED FROM THE INTERLOCUTORY DECREE, IS NOT WELL TAKEN.

The petitioner argues as the first point in its brief the question whether or not the appeal of the claimants from the decree of the district court was taken in time. This is one of the questions that it sought to raise under its petition for a cross writ of *certiorari* to review the points that had been decided against it by the Court below. *Petition for Cross Writ* p. 13; *Brief in support of Petition for Cross Writ*, pp. 2-13. We assumed in our original brief that the point would only arise under the application for the cross writ; but as the petitioner has discussed the point in its brief on the questions presented under the claimants' original writ, some reply seems to be desirable now.

Two questions were presented by the petition for a limitation of liability, and by the answers thereto: *first*, did the disaster occur without the privity or knowledge of the petitioner; and *second*, was it liable to the claimants for the faults of its servants and if so in what amounts?

Rule 56 in admiralty permits a petitioner to contest its liability as well as to pray for a limitation, in the same proceeding. The petitioner elected to raise both questions by its petition and now com-

plains because the claimants did not appeal from the interlocutory decree which decided one of them and sent the other to a commissioner. *Record* p. 1266.

We maintain that the appeal from the final decree entered after the confirmation of the commissioner's report, p. 1327, was right, under the practice that prevails in the Second Circuit, and was in accordance with the rule which requires appeals to be taken from final decrees only, so that the cause shall not be taken to the appellate courts in parcels.

The District Court for the Southern District of New York has a special set of rules relating to limitation proceedings. One of these rules, No. 78, provides as follows:

"Proof of claims presented to the commissioner shall be made by or before the return day of the monition *by affidavit* specifying the nature, grounds and amount thereof, the particular dates on which the same accrued, and what, if any, credits were given thereon, and what payments, if any, have been made on account; with a bill of particulars giving the respective dates and amounts, if the same consists of several different items. *Such proof shall be deemed sufficient*, unless within five days after the return day of the monition, *or after interlocutory decree in case of issue joined by answer to the petition*, or within such further time as may be granted by the Court, the allowance of the claim shall be objected to by the petitioner or by some other creditor filing a claim, who shall give notice in writing of such objection to the commissioner and to the proctors of the claim objected to, if any. Any claim so objected to must be es-

tablished by further legal *prima facie* proof on notice to the objecting party, *as in ordinary cases*; but any creditor desiring to contest the same upon any specific defense, must, with his notice of objection, or subsequently, if allowed by the commissioner or the Court, state such defense, or be precluded from giving evidence thereof; and the unsuccessful party to such contest may be charged with the costs thereof. The commissioner shall, on the return day of the monition, file in open Court a list of all claims presented to him."

In pursuance of this rule the claims were proved before the commissioner, in the first instance, merely by affidavits. The petitioner, thereafter, excepted to the claims, as the rule permits. Pp. 1372-1382, 2008, 2016, 2031, 2053, 2098, 2099, 2101, 2102, 2161. Accordingly, after the district judge held that the *Bourgogne* was in fault, and that the petitioner was liable to the claimants for their damages, subject to its right to have the liability limited to the value of the steamer and her pending freight, it became necessary to enter an interlocutory decree stating the rulings of the court for the guidance of the commissioner, and remitting to him as a subordinate judicial officer the ascertainment of the claimant's damages. This was done in the interlocutory decree dated March 22, 1902. Pp. 1265, 1266.

It seems that this decree was entered at the instance of the petitioner, fol. 3797, whose counsel, no doubt, devised the form in which it was entered.

The rulings contained in the opinion of Judge

Townsend, p. 1245, were repeated in the interlocutory decree of March 22, 1902 as follows: first, that the prayer for limitation should be granted; second, that claims for loss of life should be excluded from consideration in this proceeding; third, that the *Bourgogne* was to blame for the collision; fourth, that claims other than those for loss of life be referred to the Commissioner "to take testimony as to the amount of such claims and report the same to this court, together with his opinion, with all convenient speed"; fifth, that the petitioner has duly surrendered its interest in the *Bourgogne* and her pending freight by the transfer made to the trustee, and that the value of such interest extends no further than the value of the life boats and life rafts. Pp. 1265, 1266.

Pursuant to this order of reference the claims of various claimants were proved before Mr. Commissioner Alexander. The taking of proofs of claims was continued at intervals until June 29, 1903. P. 1974.

The report of the commissioner was filed May 9, 1904. P. 1301.

After exceptions to the report had been overruled, June 30, 1904, p. 1325, the final decree was entered, July 11, 1904. P. 1327.

The final decree adjudicated for the first time the amount of the losses sustained by the several claimants. It decreed the amounts for which the petitioner was liable to them by reason of the fault of the steamer, and adjudged the right of

the petitioner to limitation in respect of such claims. It determined that the Havre-New York freight and the subsidy need not be surrendered by the petitioner, awarded an injunction in the usual form, and disposed of the matter of the costs. P. 1327.

According to the petitioner's contention two final decrees were entered. It argues that the claimants should have appealed from the decree of March 22, 1902, while it has, itself, appealed from the decree of July 11, 1904, pp. 2210-2220, and assigned errors in that decree with regard to a number of matters that it now claims had been determined by the decree of March 22, 1902. Pp. 2219-2220.

The final decree recites that an "interlocutory decree" had previously been entered, and then determines finally, so far as the district court was concerned, the rights of all parties. The petitioner assigned a number of errors to the final decree; but it took no exception because the decree finally adjudicated some of the matters that had been stated to have been determined in the first decree. On the other hand it assigned error to the ruling that the *Bourgogne* was in fault for the collision, fol. 6640, a point that had been stated in the interlocutory decree, fol. 3781, as the basis for the reference of claims to the commissioner. It assigned error, further, because the district court did not find the *Cromartyshire* solely to blame for the collision, fol. 6641; because the court did not exempt the petitioner from all liability in the premises, fol. 6641; and

because the court overruled its exceptions to the commissioner's report and awarded damages to the claimants as stated in the decree with certain amounts of costs. Fols. 6641-6642.

The petitioner is thus precluded by its own acts from contending that the decree of July 11, 1904, was not a final decree. Its argument that the decree of March 22, 1902, was final, as to the matter of limitation, taken in conjunction with its act in appealing from the decree of July 11, 1904, amounts to a contention that *two final decrees* have been entered in the cause, and that the claimants could have appealed from the first one and the petitioner could have appealed, as it actually did, from the second one. The argument thus leads to an absurdity. The point was not thought of until after the petitioner had taken its appeal; it is put forward now, probably, to divert attention from the main and substantial issues of the case.

The law permits appeals to be taken from final decrees only. And this court has repeatedly held that where a decree is entered, in which certain matters are referred to a commissioner, as a subordinate judicial officer, and further action is required by the court, on the coming in of his report, no appeal can be taken except from the final decree that is entered on the report.

The *Palmyra*, 1825, 10 Wheat. 502, was the case of an armed vessel taken under Spanish colors by the United States schooner *Grampus*, privateer, and brought into the port of Charleston for adjudication. A libel was filed by the

captors and a claim was interposed in behalf of the owners of the vessel. In the District Court the libel was dismissed without costs or damages against the captors. The decree of restitution was affirmed in the Circuit Court *with costs and damages*, and a reference to commissioners was ordered to ascertain the amount of the damages. Before the report of the commissioners had been acted on by the Circuit Court, an appeal was taken to the Supreme Court. It was held that the appeal was premature, because the decree of the Circuit Court was not final in the sense of the Judiciary act of March 3, 1803, c. xl, which confined the right of appeal to *final* decrees. Chief Justice Marshall at p. 503 said:

"The damages remain undisposed of and an appeal may still lie upon that part of the decree awarding damages. The whole cause is not, therefore, finally determined in the Circuit Court, and we are of opinion that the cause cannot be divided so as to bring up successively distinct parts of it."

In *Chace* v. *Vasquez*, 1826, 11 Wheaton, 429, a libel was filed *in personam*, in the Circuit Court, against the American owners of a private armed vessel, *La Fortuna*, for the recovery of damages for the illegal seizure of a Portuguese ship and cargo. A decree *pro forma* was taken for the libelants, in the Circuit Court, and commissioners were ordered to be appointed to assess the damages. Before the commissioners were actually appointed, an appeal was taken on the

ground that no libel could be sustained *in personam* in such a case. The court followed the ruling in *The Palmyra, supra,* and held that, as the damages had not been ascertained, the decree was not final and an appeal would not lie.

In *Mordecai* v. *Lindsay,* 1856, 19 How., 199, a libel was filed against the schooner *Mary Eddy,* for damage for nondelivery of cargo. The decree of the District Court was in favor of the libelant, with an order of reference to a commissioner to "ascertain the charges to be made against the respective parties to this suit, and to state the account between them". Without any further proceedings being had in the case the claimants appealed to the Circuit Court; the Circuit Court reversed the decree of the District Court, and the libelants appealed to the Supreme Court. The Supreme Court dismissed the appeal for want of jurisdiction on the ground that there was no final decree in the District Court from which an appeal could be taken.

Mr. Justice Wayne, at p. 201, said:

"The Circuit Court had nothing before it to make its decision available for the appellants if its view of the merits of the case had coincided with the opinion of the district judge, or upon which its process could have been issued to carry out the judgment given by it in favor of the respondents. Nor could it have permitted an amendment of the record of appeal by the insertion of what the parties might have agreed to be a final judgment as to amount, without its having first received the judicial sanction of the district

judge. And this court is as powerless in this respect as the Circuit Court was, as its jurisdiction depends upon that court having a proper legislative jurisdiction of the case. * * * The case in that Court was *coram non judice* and is so here. The appellants have the right to the execution of the order given by the district judge to the commissioner and clerk of the court, to ascertain the charges to be made against the respective parties to the suit, and to state the account between them; * * * *That* the Circuit cannot direct to be done, nor can this court do so * * * All that we can do in the case, as it stands here, is to reverse the decree * * * to send the case back to the Circuit Court that the appeal in it may be dismissed by it for want of its jurisdiction leaving the case in its condition before the appeal to that court, that the parties may carry out the case in the District Court to a final decree, upon such a report as the commissioner and clerk may make according to the order which was given by the Judge."

In *Beebe* v. *Russell*, 1856, 19 How., 283, Mr. Justice Wayne, at p. 285 said:

"A decree is understood to be interlocutory whenever an inquiry as to matter of *law or fact* is directed, preparatory to a final decision * * *

"When a decree finally decides and disposes of the whole merits of the cause, and reserves no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its final decision, it is a final decree * * * p. 286. The object of the law and interpretation of it by this court, is to prevent a case from coming to it from the courts below, in which the whole

controversy has not been determined finally, and that the same may be done in this court * * * But the reference of a case to a master, to take an account upon evidence, and from the examination of the parties, and to make or not to make allowances affecting the rights of the parties, and to report his results to the Court, is not a final decree; because his report is subject to exceptions from either side, which must be brought to the notice of the court before it can be available. It can only be made so by the courts overruling the exceptions, or by an order confirming the report, with a final decree for its appropriation and payment."

In *Craighead et al.* v. *Wilson*, 1855, 18 How., 199, the complainants filed a bill in the Circuit Court claiming certain property as heirs. The Circuit Court having ascertained the heirship of the complainants and their relative rights in succession, referred the matter to a special master to take an account of the successions of certain of the heirs insofar as it might be necessary to state the accounts between the plaintiffs and the defendants, to ascertain the property remaining in the possession of either of the defendants, and the price of the same and the profits thereof, to report any encumbrances that had been discharged by either of the defendants on the property, to make all just allowances for payments, permanent and useful improvements, and just expenses, and to report what was due to the plaintiffs from each defendant. Before the special master reported to the court an appeal was taken. The appeal was dismissed by this Court. Mr. Justice McLean, at p. 200 said:

"*The law intended that one appeal should settle the matter in controversy between the parties;* and this would be the result in all cases where the appeal is taken on a final decree unless it should be reversed or modified by this Court."

Again at Page 201:

"To authorize an appeal the decree must be final in *all matters within the pleadings, so that an affirmance of the decree will end the suit.* * * * In no legal sense of the term is the decree now before us a final one. The basis of the decree, embracing the equities in the bill, is found, but *the distribution among the parties in interest depends upon the facts to be reported by the master.* * * * Until the Court shall have acted upon this report and sanctioned it, giving to each of the devisees his share of the estate under the will, the decree is not final."

In *Keystone, Manganese & Iron Company* v. *Martin*, 1889, 132 U. S., 91, a bill in equity was brought in the circuit court to enjoin the defendant from trespassing on the plaintiff's ore deposits, from removing ore therefrom, and for an accounting of the value of ore already taken by the defendant. The court granted a perpetual injunction against the defendant, and ordered that an account be taken, appointing a master for that purpose. From that decree the defendant appealed to the Supreme Court. It was held that the decree appealed from was not a final decree, and that the court was without jurisdiction. Mr. Justice Blatchford, at p. 93, said:

"The decree is not final, because it does not

dispose of the entire controversy between the parties. The bill prays only for an injunction, and an account of the quantity and value of the ore taken from the land by the defendant. The injunction is granted, but the account remains to be taken. The case is not one where nothing remains to be done by the court below, except to execute ministerially its decree. In all cases like the one before us this court has uniformly held that the decree was not final and was not appealable."

In *Guaranty Co.* v. *Mechanics Savings Bank & Trust Co.*, 1898, 173 U. S., 582, a suit was removed from a Tennessee state court to the United States Circuit Court, brought upon two bonds, executed by the defendant, insuring the complainant against pecuniary loss on account of one of the plaintiff's employees. The defaulting employee had a few days before his death assigned to the complainant certain life insurance policies, a part of which amount had been collected, the residue being in dispute, and had assigned to the complainant two lots of land. The bill also asked for an accounting. The Circuit Court decreed that the defenses failed, and that the complainant should have its decree on each of the bonds, but that the defendant's liability was secondary to that of the employee's estate, and that the complainant should account for all collections realized on the assets turned over to it by the employee to reimburse it against his defalcations. The court appointed a commissioner to report on the matter, and decreed that, until such report, no exe-

cution should issue except for the costs, and that the cause should remain upon the docket for the purpose only of making any orders necessary to apply all collections from the assets of the employee in exoneration of the defendant. The decree further provided that "the case is retained for no other purpose, and the decree against the defendant company is final as fixing its liability on the bonds to make good the shortage, whatever that may be." The defendant appealed to the Circuit Court of Appeals, where the decree was affirmed. The case came before this Court on a writ of certiorari. It was held that the Circuit Court of Appeals was without jurisdiction to review the decree of the Circuit Court, because that decree was *not* final for the reason that the amount for which the defendant should be held finally liable on execution had been left to be ascertained by a commissioner. Mr. Justice Harlan at p. 586, said:

"In effect, the Circuit Court only determined that none of the defenses were good in law, and that the Guaranty Company was liable on its bonds for such sum as might thereafter be found to be due, after crediting the amounts that might be realized from the assets turned over to the plaintiff bank by Schardt. Notwithstanding the Company's defenses were adjudged to be bad in law, it remained for the Circuit Court, by proper orders, to accomplish the object of the suit, namely, to ascertain the amount for which the plaintiff was entitled to judgment and execution. When that amount is judicially ascertained and fixed by a final decree, the adjudication of the cause will

be completed for all the purposes of an appeal; and if the decree be affirmed, the Circuit Court will then have nothing to do but to carry it into execution."

In *Bowker* v. *United States*, 186 U. S., 135, the question was presented, whether or not an appeal could be taken from the dismissal of a cross-libel in admiralty. Mr. Chief Justice Fuller, at p. 138, said:

"It was settled soon after the passage of the act of 1891, that cases in which the jurisdiction of the District or Circuit Courts was in issue could be brought to this court only after final judgment. *McLish* v. *Roff*, 141 U. S., 661; *Railway Company* v. *Roberts*, 141 U. S., 690. The subject was carefully considered in the opinion of Mr. Justice Lamar in the first of these cases, and the conclusion reached was in accordance with the general rule that *a case cannot be brought to this court in parcels*. *Railway Company* v. *Postal Telegraph Company*, 179 U. S. 641.

Further, at p. 139, the Chief Justice said:

"Counsel quote the language of Mr. Chief Justice Waite in *Railroad Company* v. *Express Company*, 108 U. S., 28, that 'a decree is final, for the purposes of an appeal to this court, when it terminates the litigation between the parties on the merits of the case, and leaves nothing to be done but to enforce by execution what has been determined;' and insist that the decree on the cross-libel has definitely determined the right of respondent to affirmative relief. But the litigation between the parties on the merits embraced the right of libelant to recover because of the fault of a respondent, as well as the right of respond-

ent to recover because of the fault of libelant, and until the question as to which of the parties was at fault, or whether both were, is determined, that litigation cannot be said to have terminated."

In this case the litigation obviously embraced the ascertainment of the amount of the damages suffered by the claimants, in respect of which the limitation was sought. Those amounts were not determined until the report of the commissioner was confirmed. The decree which finally adjudged and determined the rights of the parties with regard to the damages established on the reference at which the petitioner's counsel attended was therefore the only final decree.

The cases cited by the petitioner, *Brief* pp. 30-41, are distinguishable. In *Ray* v. *Law*, 3 Cranch, 179; *Whiting* v. *Bank of the United States*, 13 Peters, 5; *Bronson* v. *Railroad Co.*, 2 Black, 524; *Bank* v. *Sheldd*, 121 U. S., 74; *Hill* v. *Chicago & Evanston Ry. Co.*, 140 U. S., 52; *Hoffman* v. *Knox*, 50 F. R., 484; *Winthrop* v. *Meeker*, 109 U. S., 180; *Lewisburg Bank* v. *Sheffey*, 140 U. S., 445, and other similar cases cited, the decrees determined the issues raised between the parties, and merely left certain ministerial functions to be disposed of, *e. g.*, the payment over of proceeds of sale, by a master, after foreclosure, or the distribution of funds brought into court in pursuance of the decree.

Forgay v. *Conrad*, 6 How., 201, is an exceptional case, to be sustained only on the ground

that a decree otherwise interlocutory, in character, was held to be final because it provided for execution. The case is distinguished on this ground in *McGourky* v. *Toledo &c Ry.* 146 U. S. 536, at pp. 546, 547.

Thomson v. *Dean*, 7 Wall., 342, rests on the same doctrine as *Forgay v. Conrad*, that where the decree directs property to be delivered to a party, and he is entitled to have it carried into immediate execution, the decree must be treated as final to avoid irreparable injury, even though a further decree must be entered to adjust the accounts between the parties. Both these cases are distinguishable on their own special facts.

The cases of limitation from the Ninth Circuit are not analogous because the practice there seems to require the claims to be fully proved before or at the trial so that, at the conclusion of the argument, the Court can enter a final decree disposing of all the matters in issue. This practice seems to be indicated by the decisions in *The Annie Faxon*, 66 F. R., 575; 75 F. R., 312; *Parsons* v. *Empire Transportation Co.* 111 F. R., 202; 183 U. S., 699; and it is shown to have been the procedure by the record in the most recent case from that circuit, which is on file in this court. *Michigan S. S. Co.* v. *McGill*, 203 U. S. 593; reported below as *McGill* v. *Michigan S. S. Co.*, 144 F. R., 788.

In *Gleason* v. *Duffey*, 116 F. R., 298, there was apparently no contest as to the amount of the limitation fund. The decree adjudged

that the petitioners were liable to the extent of a certain sum which had been paid into court, in respect of a judgment that had been recovered against them for a much larger sum in the State Court of Indiana. The claim had thus been adjudicated and determined prior to the final hearing in the limitation action. The decree was that the liability of the petitioners was limited to the fund in Court. The only question reserved for further consideration was the determination of the extent of the lien of the claimants proctor on the fund thus adjudged to be due to a single claimant. This case is therefore, not in point.

In *Butler* v. *Boston Steamship Company*, 130 U. S., 527, two points were specially raised under an agreed statement of facts, *first*, does the statute include losses by death? and *second*, must the petitioner surrender its insurance on the vessel? One decree was entered and it determined the entire controversy. There was no contest as to the limitation fund, except with regard to the insurance. The saving from the wreck does not appear to have been dealt with in the case.

The correctness of the practice in the present case is attested by the rulings in the case of *The Great Western*, 118 U. S., 520. The controversy arose out of a collision between the Norwegian Bark *Daphne* owned by Thomassen, and the British Steamship *Great Western* owned by Whitwell, and is reported below as *Thomassen* v. *Whitwell*, in 9 Benedict, 403, 9 Benedict, 458, and 12 Fed. Rep., 891. The owner of the *Daphne* filed

a libel *in personam*, to recover the damages suffered by his vessel. The owner of the *Great Western* pleaded his right to a limitation of liability by way of answer, offered to surrender his interest in the vessel, and at the trial tendered a written surrender of his interest as of the date of the collision.

The District Court held, in a long opinion, that the Statute could not be invoked in an action between foreigners arising out of a collision on the high seas, that the right to abandon to the libelant had been waived by a previous sale of the wreck which transferred the title and possession to third parties, and that a limitation of liability could only be had in a special proceeding instituted for that purpose. On the whole case it refused to grant a limitation of liability. 9 Ben., 403.

A decree was entered on this decision adjudging that the libelants recover the damages suffered by them in consequence of the collision, and referring the ascertainment of the amount of the damages to a commissioner. This decree was entered on March 28, 1878. *Original Record in The Great Western on File in this Court*, p. 142. The reference lasted more than two years. The commissioner's report was filed on January 5, 1881. *Id.* p. 381. Exceptions to the report were dealt with February 14, 1881, *Id.* p. 385.

The final decree awarding damages in the sum of $17,023.44 was filed Feb. 21, 1881. *Id.* pp. 386, 387.

An appeal was entered against this latter decree on February 23, 1881. *Id.* 388.

No appeal was taken from the decree of March 28, 1878, which had denied the defendants' prayer for a limitation of liability by adjudging a full recovery to the libelant, and had ordered a reference.

The Circuit Court on appeal from the last decree considered the question of the petitioners' right to a limitation of liability which had been denied under the first decree entered more than two years earlier; and in an opinion and judgment by Mr. Justice Blatchford, held that the claim to a limitation had been sufficiently set forth in the answer and granted the limitation to the sum of $1,796.14. 12 F. R., 891, 905. His decision was affirmed in this court. 118 U. S., 520.

The case is the converse of this one, but the principle is the same. On appeal from a final decree, entered long after the right to appeal from the first decree which denied the prayer for limitation had expired, the appellate court reversed the ruling contained in the earlier decree, and awarded the limitation. So here on this appeal from the final decree the Court can reverse the ruling first stated in the interlocutory decree, and adjudged in the final decree, awarding a limitation of liability.

If the petitioner's contention here is right, Mr. Justice Blatchford should have refused, in *Thomassen* v. *Whitwell*, to consider any matter except questions that were raised by exceptions to the commissioner's report, and this Court

would not have had jurisdiction of the cause on the appeal from his decision. Judge Thomas has ruled that the final decree was drawn in accordance with the practice prevailing in the Eastern and Southern Districts of New York. Fol. 3975.

II.

CORRECTION OF VARIOUS ERRORS AND INACCURACIES IN PETITIONER'S BRIEF.

P. 23. While Mr. Murray, counsel for certain claimants, was in the Philippines, a clerk in his office, with an excess of caution, filed notices of appeal from the interlocutory decree of Judge Townsend. Pp. 2207-2209. Appeals were taken in the regular course, by the same claimants, from the final decree. Pp. 1331, 1332. The assignments of error, pp. 1334,1335, state that the court below erred in certain particulars stated. They do not refer specifically to any decree. These claimants are, therefore, by accident, in the fortunate position of having taken their appeals in such manner that they are clearly in time, whether it be considered that they should have appealed from the first decree, from the second one, or from both.

It is, perhaps, needless to add, however, that all the claimants maintain that the appeals from the final decree are sufficient. The appeals from the first decree were taken in error.

Pp. 54, 55. We are unable to find any such passage in 1 Valin, p. 568, as purports to be trans-

lated in the petitioner's brief. The citation from Valin, on p. 55, should be Lib. II, Title VIII, Art. II. The words "pending freight" do not occur in the Ordinance, nor in Article 216, of the French Code of Commerce. The words used are "ship and freight."

Under the Ordinance, the French Code of Commerce, and the other continental codes referred to in the authorities cited on pages 55, 56 and 57 of the petitioner's brief, the limitation granted to the owner is only in respect of the acts, *faits*, of the Captain. The limitation is not stated in as broad terms as it is under our statute. There is no suggestion that the owner is entitled to a limitation of his liability in respect of his own contracts or his own faults. If our statute relieves the owner from any liability that would be imputable to him for any other cause than the neglect of the master, it seems to go further than the continental rule from which it was said to have been derived.

P. 58. In view of the argument sought to be drawn by the petitioner from historical sources in support of its plea for a literal interpretation of the limitation of liability act, it may not be improper to scrutinize the authority to which the petitioner unwarily refers.

Hugo Grotius has long been highly esteemed for his commentaries on commercial law. He is credited by the petitioner with announcing in 1625, that in Holland, it was universally estab-

lished that the shipowners' liability was limited to the ship and her pending freight.

As Grotius wrote in the Latin language, the petitioner gives not only the text, but an accompaniment in English at p. 58, of its brief. The Reverend William Whewell, sometime master of Trinity College, Cambridge, and reputed to be versed in the Latin language, issued in 1853, an edition of Grotius with a translation. In the interest of accuracy, for which the petitioner's appeal to history is a sufficient excuse, we subjoin the petitioner's version of Grotius, with that of Dr. Whewell's text and translation. *De Jure Belli et Pacis*, Lib. II., Cap. XI., S. 13; Vol. 2 of Whewell's ed., Cambridge, 1853, p. 46.

"Apud Hollandus ubi mercatura pridem maxime viguit * * * et nunc et olim constitutum ne exercitoria otiam universal exercitores amplius tensantur quam ad aestimationem navis, et quorum quae in navi sunt.

"Absterrem ter enim homines eb exercendis navibus si mtuant ne ex facto magistri quasi in infinitum reneamtur."

Grotius, De Jure Belli et Pacis, 1. 2, Ch. 11, s. 18.

"A translation of this is as follows":

"absterrentur enim homines ab exercendis navibus, si metuant ne ex facto magistri quasi in infinitum teneantur. Atque adeo apud Hollandos, ubi mercatura pridem maxime viguit, et nunc et olim lex illa Romana observata non est: imo contra, constitutum, ne exercitoria etiam universi amplius teneantur, quam ad aestimationem navis, et eorum quae in navi sunt."

The words really mean this:

"In regard to the law of Holland in respect to the limited liability of merchants * * * it is now established universally that their risks are limited to the value of the ship and her pending freight.

"And all persons having claims are limited in their judicial suits to this final recourse."

"for persons are deterred from sending adventures in ships, if they are in fear that they may be indefinitely involved by the acts of the captain. And therefore in Holland, where commerce has long flourished, that Roman law neither prevailed formerly, nor does now; on the contrary, it is the law that, in an exercitorian action, even the whole body of owners are not held responsible, beyond the value of the ship and cargo."

It will be observed that there are approximately 19 errors in the transcription of the text, including the transposition of the first sentence from the beginning to the end of the quotation, and the errors of citation.

So far as the translation or meaning of the language of Grotius is concerned, the petitioner and Dr. Whewell seem to be hopelessly at odds, The Roman law, to which Grotius referred, was that all the shipowners were bound, severally as well as jointly, by the acts of the captain.

We think it may fairly be suggested that the early authority relied on by the petitioner does not support its position.

The question of the proper interpretation to be given to the limitation of liability act, does not now rest on ancient historical considerations, whatever they may have been. The act has been interpreted by numerous decisions of this court and it is on the construction placed by those decisions on the Act, that the claimants rely.

P. 78. The petitioner suggests that we "rely upon alleged acts and the knowledge of acts, extraneous to the immediate cause of the collision, for charging the petitioner with privity in respect to the cause." This is an error. The cause of the collision was the immoderate speed of the *Bourgogne* in fog; and we claim that the petitioner had knowledge, or was chargeable with knowledge, that its vessels were accustomed to navigate in that way in fog. Knowledge of such a practice would not be knowledge of facts "extraneous to the immediate cause of the collision." It would be what the petitioner on p. 71, of its brief intimates would be sufficient to show privity and knowledge—that is, "some participation or actual concurrence on the part of the owner *with respect to the cause of the loss.*"

P. 80. The statement that the Company as early as December 1884, "made an order" to the effect stated, is inaccurate. There is no proof that it made an order to the effect stated in the letter of December 19, 1884. Fol. 2,890. It merely wrote a letter which it exhibited to certain cap-

tains whose signatures are on the margin. Fols. 2,887, 2,890, 2,893 and 2,894.

The letter is not connected in any way with Captain Deloncle, nor does it appear that any copy of it had been delivered to him or put aboard the *Bourgogne*.

P. 81. It is stated that "in 1891 the substance of this order [the letter of December 19, 1884] was embodied in permanent regulations." This is an error. There is no proof that articles 393, 394 and 395 quoted in petitioner's brief at pp. 81 and 82 were based on the letter dated December 19, 1884. On the contrary it was testified by Mr. de Bocande, petitioner's agent, that article 395 had been in existence many years before the letter of December 19, 1884 was written. Fols. 3,071-3,076.

P. 98. In replying to the claimants' argument on the effect resulting from the petitioner's failure to produce the log books, the petitioner states: "The utmost effect of the failure to produce is, there being evidence of the books not being preserved, the claimants could have put in secondary evidence of their contents if held material."

Possibly this suggestion is not made seriously. Of course the claimants were not in a position to put in secondary evidence of the contents of the logs. Log books continually in the possession of the petitioner or its servants as the proofs show are not documents passing between the shipowner and passengers or shippers of cargo, and the lat-

ter have no opportunity to make copies nor yet extracts of log books.

Manifestly if the log books were not actually produced, evidence of their contents could not be given. It is not improbable that knowledge of this fact fortified the petitioner in its consistent plan to prevent that evidence contained in the log books from being placed at the disposal of the court.

P. 92. The statement that the letter, *Petitioner's Exhibit 35*, "was finally received in evidence *without objection except as to its materiality*" is not correct. The letter, when offered before the court, was twice excluded by Judge Townsend. Fols. 1,404, 1,405, 1,423-26. When it was again offered out of court during the examination of Mr. de Bocande, Mr. Benedict objected to it, "*as already having been offered and ruled out*, and as immaterial." The reason for its exclusion by Judge Townsend was not that the signature to it it had not been proved,but because it was hearsay and incompetent. The reasons for excluding it continued, and were as cogent when it was tendered on the examination of Mr. de Bocande, as they were at the time the court excluded it. The letter was never "received in evidence," and should not be considered by the court as evidence. But even if it should be considered as having been received in evidence it would prove nothing more than that such letter was written. It would not prove the matters referred to in the letter.

The petitioner further suggests, p. 92, that the

order of Judge Brown "was not proof that the log books existed."

The moving papers on which the order was granted alleged that the log books were in the possession of the petitioner, fols. 494, 499, and the answering affidavit *did not deny that assertion*, or make the faintest suggestion that the log books had not been preserved, or were not in existence. That affidavit stated that the log books "kept" during the voyages before the collision would not furnish evidence material to the disposition of the issues. Fol. 505. It seems impossible that a statement of that kind could have been made unless the log books were in existence at that time and had been seen by the deponent. It is too late now to claim on this record, and in the absence of proof to that effect, that the log books were not in existence at the time of the trial.

The suggestion on p. 93 that the "testimony showed the practice of the Company was not to keep them" [the log books], is also inaccurate. Mr. Simon stated, on his direct examination, that the log books were sent to the Central Administration at Paris, and "finally" destroyed the same as other useless papers, fol. 1422; but on his cross-examination he stated that in the ordinary course of business he never saw the logs after they were sent to the Central Administration at Paris. Fol. 1429. Obviously, therefore, he could not know what the practice of the petitioner was with regard to keeping them, nor

when, in ordinary course, they would have been destroyed, if at all.

Mr. de Bocande, whose testimony is also referred to, knew nothing about the subject. He was asked "what, if anything, was done by the Company with the log books of the steamers, if you know," fol. 2961, and answered, "I never saw any myself." Fol. 2962. He was further asked if he knew whether or not it was the practice of the Company to preserve these log books for any length of time, and he answered, "They are put with the old papers, and I *suppose* they are destroyed, with a quantity of old papers we had." Fol. 2962. On his cross-examination Mr. de Bocande came very near saying that he had seen some of the log books in question in the Paris office after the order was made. Fols. 2967, 2968.

The testimony of these two witnesses does not show that it was the practice of the Company not to keep the log books as long as three years. There is no other evidence on the subject.

The petitioner's counsel further claims some credit for having offered of his own motion to produce any log books that the petitioner might be able to procure, which offer he states was "not accepted."

The petitioner's counsel made no such offer. Fol. 1817. The claimants were always desirous of obtaining possession of any of the petitioner's log books. Their efforts in that direction were thwarted repeatedly by the petitioner's counsel, who instructed three witnesses not to produce log books which they had been subpœnaed to pro-

duce and had in their hands. After these performances the belated profession of a willingness to produce logs unaccompanied by the production or exhibition of actual documents carries but little weight.

P. 118. The petitioner also suggests that it cannot be charged with violation of Sec. 4488 of the Revised Statutes, in failing to provide sufficient boat accommodation for all the persons on the *Bourgogne*, "because neither that section nor any other requires a steamer to be equipped with boat capacity to take on board every person on the ship, nor greater than the boat capacity by tonnage measurement."

This is merely preposterous.

Sec. 4488 was a practical measure which sought to insure such provision by way of boats or rafts "as will best secure the safety of all persons on board such vessel in case of disaster." The statute did not refer either to the size of the vessel, or to the number of passengers carried. The expressed concern of Congress was that provision should be made to secure the safety of *all persons on board*, irrespective of their number.

Whatever latitude of discretion may have been given to the supervising inspectors with respect to the kind of appliance to be used, it would seem obvious that the purpose of the act could not be attained if the inspectors could authorize the shipowner to provide such limited accommodation that a greater or less number of the passengers could not possibly be provided for by it in case of disaster.

P. 135. The decision in the case of *The Rio de Janeiro and The Champagne* seems to have been based upon the fact that the *Rio de Janeiro*, for some unaccountable reason, threw herself across the course of the *Champagne* immediately before the collision, and that this was the proximate cause of the collision. *Record*, pp. 1220, 1221. The case is hardly an authority for the proposition that the French courts treat a speed of 14-1/2 knots in fog as moderate.

Pp. 137-139. The authorities referred to do not show any diversity in the interpretation of the international rule which requires vessels to go at moderate speed in fog. The cases cited are not inconsistent with the rule of our law that a vessel must proceed at such a rate of speed in fog as will enable her to stop and avoid collision with another vessel, within the distance at which she can see such other vessel, provided the other vessel is also obeying the rules.

Respectfully submitted,

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Of Counsel.

OCT 28 1907
JAMES H. McKENNEY,

Supreme Court of the United States,

OCTOBER TERM, 1907.

GEORGE DESMONS, et al.,
Petitioners,

against

LA COMPAGNIE GÉNÉRALE TRANS-ATLANTIQUE,
Respondent,

No. 33.

BRIEF IN BEHALF OF LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE.

EDWARD K. JONES,
Proctor for La Compagnie Générale Transatlantique.

WM. G. CHOATE,
EDWARD K. JONES,
JOSEPH P. NOLAN,
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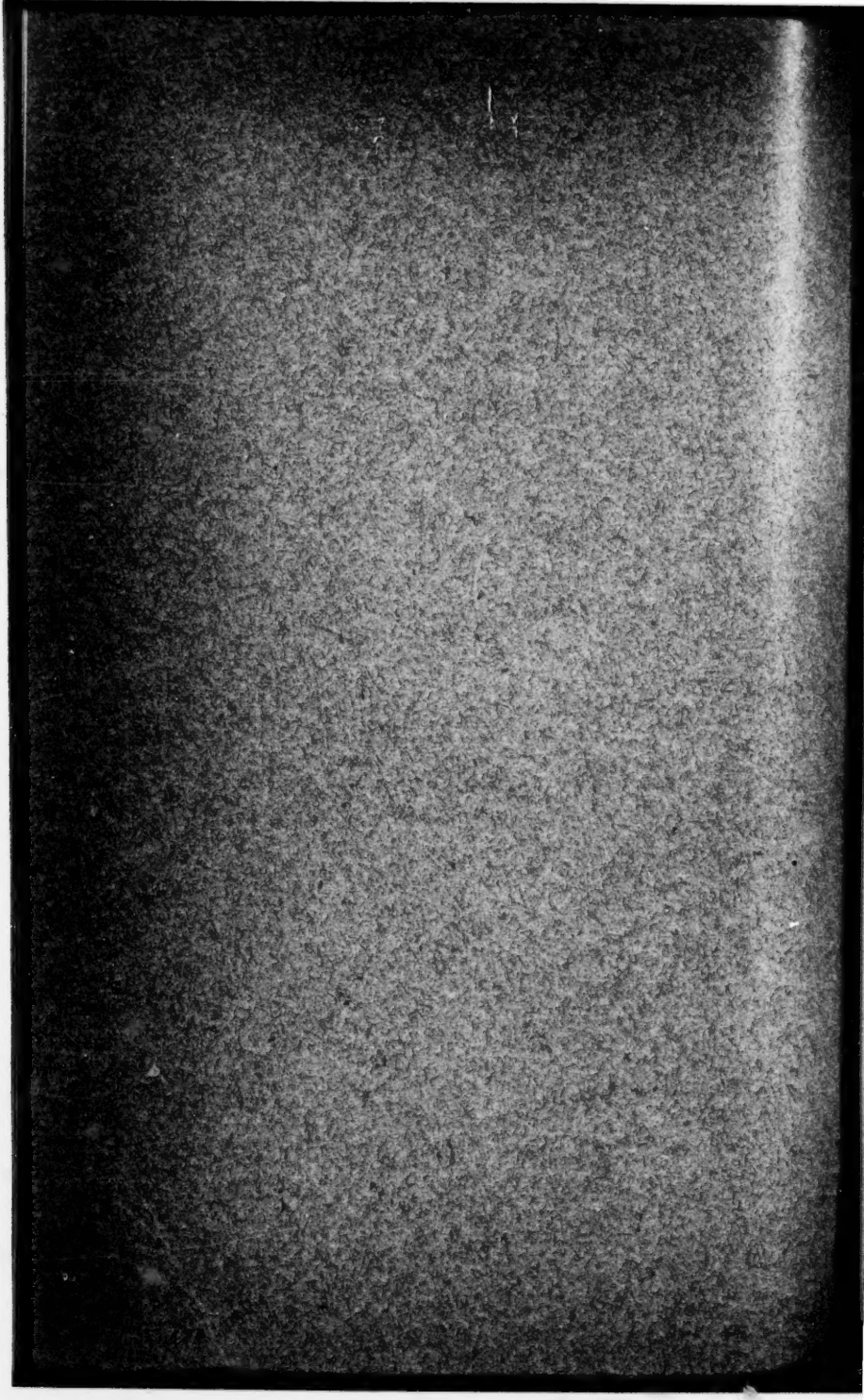

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Supreme Court of the United States,

OCTOBER TERM, 1907.

George Deslions, *et al.*,
Petitioners,

against

La Compagnie Générale Transatlantique,
Respondent.

No. 33.

Brief in Behalf of La Compagnie Générale Transatlantique.

Statement.

This case comes before the Court by a writ of *certiorari* issued to the Circuit Court of Appeals for the Second Circuit, on the petition of *Deslions, et al.*, filed on the 21st of May, 1906.

A counter-petition is also pending for a review of the errors of the Circuit Court of Appeals against the interests of the petitioner, *La Compagnie Générale Transatlantique*, which this Court has reserved for consideration until the hearing of the petition of *Deslions, et al.*

For purposes of convenience, and in order to avoid confusion, the respondent herein will be referred to as the petitioner, and the petitioners in this proceeding will be referred to as the claimants, by which titles they were known and referred to in both Courts below.

The disaster which led to this litigation and its incidents.

On the 4th of July, 1898, on the high seas, about 60 miles off Sable Island, the French Steamship *La Bourgogne*, while on one of her regular voyages from New York to Havre, was lost as a result of a collision in a fog with a British sailing vessel, the *Cromartyshire*.

Only one blast of the fog horn of the *Cromartyshire* was heard, and this on the starboard hand of the *Bourgogne*, and the *Cromartyshire* almost immediately after struck the *Bourgogne* so suddenly that no manouvre was possible on the part of the *Bourgogne*.

The incidents attending and following the collision are plainly told by the few survivors of the disaster.

The collision happened at about half-past five o'clock in the morning. For an hour there had been a dense fog. Before that the siren or fog whistle of the *Bourgogne* had blown at intervals during the night. The steamer was slowed down to about ten knots, which, however, the Courts below have held was excessive.

The statement of a passenger, La Casse, who made a contemporary statement, which is interesting and no doubt intended to be accurate, that the steamer was kept at full speed through the fog down to the collision is an obvious mistake. But his confidence that he could tell that the steamer was going at full speed is an illustration of the unreliable character of the testimony of passengers as to such a point, even the most honest and intelligent of them.

The immediate effect of the collision was that the side of the *Bourgogne* was crushed in and ripped open, that is to say from a point forward the starboard side of her bridge to nearly her stern, letting the water into the state rooms of passengers and the compartments of the engine and fireroom. Three lifeboats on the starboard side were demolished and wholly disabled in consequence of the collision.

The steamer was stopped immediately after the collision, and then started up again, the captain intending to make for Sable Island, 60 miles distant, and to beach her there.

The engine and fire room watch on duty remained at their posts attending to their duties till the water reached the fires and the chief engineer gave the signal for the men to save themselves. Meanwhile the captain gave orders to the officers to look after the pasesngers and to get out the boats. Very soon after the collision the vessel took a list to starboard, which constantly increased and all efforts to launch the boats on the port side were rendered futile by this list. Of the six boats on that side, only two could be launched into the water. One was taken immediately after

the collision by sailors under orders from the captain to go around and examine the injury to the ship. This was supposed by a passenger—La Casse—to have been improperly taken off by the crew. She was afterwards used in rescuing those in the water. The other, filled with passengers, was launched, but capsized immediately upon reaching the water, being, probably, overloaded.

One boat on the starboard side was seized by 12 or 15 Austrian or Italian sailors, who were third class (steerage) passengers, against the resistance of the crew, and in it they escaped and afterward reached the *Cromartyshire*. They prevented any one else from getting on board.

Thus, of the twelve boats with which the steamer was provided:—

Three were crushed or wholly disabled by the collision.

Four on the port side were rendered useless by the list of the ship.

One was stolen; and one was capized in launching.

Of the remaining boats, one, on the starboard side, full of women and children, was crushed by the falling of one of the funnels of the *Bourgogne* just as it was launched and nearly all on board were lost. The remaining boats were used in the rescue of the crew and passengers.

One boat with fifty-seven persons on board reached the *Cromartyshire*.

The two life rafts on the port side could not be launched, but their lashings were cut and they floated after the ship went down. The two life rafts on the starboard side were launched before the vessel sank.

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Immediately after the collision the principal officers, under the direction of the captain, assembled the passengers on deck, furnished them life preservers and did what they could to get the boats out. Many of the steerage passengers crowded into the boats and hindered the efforts of officers and crew to launch them.

This remarkable series of events following the collision accounts for the great loss of life.

There were undoubtedly individual instances of selfish brutality in the struggle for life or safety, but there was no disorder.

The captain stayed at his post on the bridge and went down with his ship. All the officers, engineers and seamen on duty were lost except the 4th engineer, the assistant purser and a quartermaster.

The first cabin passengers, with their life preservers on, were mostly grouped under the bridge, where the captain spoke to them and expressed the hope that he would save them by beaching the ship at Sable Island. The heroism of the master, officers, engineers and seamen of the *Bourgogne* was wonderful and almost unparalelled.

The bravery of the captain and his crew and their devotion to duty, and the calmness on the part of the passengers in the face of great peril and impending death was really extraordinary.

It was a wonderful case of heroism on the part of the officers, of devotion to duty on the part of the crew, and of calmness on the part of the passengers in the face of great peril and impending death.

The ship listed over till the starboard rail was level with the water, then suddenly righted and went down by the stern about thirty-five minutes after the collision.

Soon after she sank the fog cleared and the *Cro-*

martyshire was seen two miles or more away. The *Bourgogne's* boats which reached her were again employed for several hours in rescuing those who clung to capsized boats and were afloat on the two rafts.

One of the steerage passengers named Cammeau told an improbable story of disorder, of cruel and brutal treatment of passengers by officers and crew, of carousing by the passengers and officers during the night, but he was so thoroughly contradicted at every point that Judge Townsend, who heard the testimony, pronounced him unworthy of credit. He testified that he had $5,000 on board the ship in money, which was lost. He testified to delivering it to the purser. He also testified to having arranged an exchange from 3rd class to second class.

Yet the Assistant Purser who received all the money handed in by 2nd and 3rd class passengers, testified that none was received from Cammeau, and that there were no exchanges from 3rd to 2nd class, and that all requests therefor were refused because every place in the 2nd class was full.

Cammeau was so thoroughly discredited that he did not even file a claim in the pending proceeding for this pretended loss of money.

The chief witnesses to the circumstances of the collision and to what followed, and whose testimony sustains this narrative of the disaster, are the following:

1. Louis Corre, steersman on watch, (examined as witness in England and his testimony read here.) (pp. 418-426; fols. 1252-1276.)
2. Edward Laisne, 4th Engineer, not on watch, (pp. 426-431, 485, 507; fols. 1455-1519, fols. 1967-1942).

3. Emil H. Scol, Assistant Purser, (pp. 807-832, fols. 2387-2479.)
4. Ives Pierre, Sailmaker, on watch, (pp. 739-746, fols. 2201-2222.)
5. Albert Gaidot, Passenger 2nd Class, (pp832-855, fols. 2481-2550.)
6. Andre Defres, Electrician, not on watch, (pp. 507-511, fols. 1520-1532.)
7. Jacques Dufour, waiter, not on watch, (pp. 511-514, 516-517, 517-520, fols. 1532-1541, 1547-1550, 1553-1560.)
8. Yves Le Bris, Head Topman on watch, (pp. 521-525, fols. 1561-1574.)
9. Charles Fortin, Fireman on watch, (pp. 628-636, fols. 1883-1906.)
10. Fortune Valer, Seaman on watch, (pp. 608-664, fols. 1944-1984.)
11. Pierre Le Breton, Seaman on watch, (pp. 664-676, fols. 1985-2017.)
12. Julien Pironnec, Electrician, not on watch, (pp. 676-680, 690-693, fols. 2019-2029, 2059-2070.)
13. Desire Maguer, Seaman on watch, (pp. 694-707, fols. 2071-2109.)
14. John Calvary, Fireman on watch, (pp. 708-725, fols. 2110-2162.)
15. Emil La Bourch, Assistant Engineer, not on watch, ((pp. 746-756 ,fols. 2222-2251.)
16. Pierre Voisin, Electrician on watch, (pp. 760-772, fols. 2264-2299.)
17. Francais Nicolai, Coalheaver, on watch, (pp. 772-778, fols. 2300-2317.)
18. Sylvestre Allain, Fireman on watch, (pp. 778-781, fols. 2318-2327.)

19. Francais Hamel, Fireman on watch, (pp. 782-786, fols. 2330-2344.)
20. Louis Le Julien, Fireman on watch, (pp. 791-796, fols. 2356-2371.)
21. Yves Marie Maigny, Stoker, not on watch, (pp. 796-799, fols. 2373-2382.)
22. Jean Salaim, Fireman, not on watch, (pp. 864-865, fols. 2575-2580.)
23. Joseph Andren, Fireman and Storekeeper, not on watch, (pp. 868-882, fols. 2588-2631.)
24. Joseph Helin, Oiler, not on watch, (pp. 978-986, fols. 2919-2941.)
25. Petiot, Boatswain and Quartermaster and others Declaration at Halifax, July 6, 1898 (pp. 986-987, fols. 2941-2945.)
26. Le Casse, Passenger, by deposition, June 1, 1901 (pp. 235-302, fols. 703-905.)

The petitioner produced or examined by deposition all the survivors whose testimony could be obtained as was admitted by the claimant's counsel. (P. 999, fol. 2980.)

HISTORY OF THE LITIGATION.

(1) The Nature of the Case and Original Petition.

The case arose originally in the District Court of the United States for the Southern District of New York on a petition for a limitation of the liability of the petitioner, *La Compagnie Generale Transatlantique*, as the owner of the steamship *La Bourgogne*, which was lost, as above stated, on the high seas in a collision between that steamer and the British sailing vessel *Cromartyshire* on the 4th of July, 1898, off Sable Island, and about sixty miles from land.

The petition (p. 6, folio 17) alleged that the petitioner was the owner of the steamship *La Bourgogne*, which left the Port of New York on July 2nd, 1898, with a large cargo of merchandise and a number of first, second and third-class passengers, bound for Havre, France; that she proceeded on her voyage without mishap until she reached a point in the Atlantic Ocean, about sixty miles off the coast of Sable Island, on the morning of July 4th, 1898; that at that time there was a dense fog; that *La Bourgogne* was, therefore, proceeding at reduced speed under slowed engines, sounding her fog whistle at the intervals required by law; that her master and a full corps of officers were on the bridge, and a proper number of officers and seamen were on duty on deck, all of whom were attentive to their respective duties; that in this condition of things, and at about half past

five o'clock in the morning, a large ship which was afterwards discovered to be the British ship *Cromartyshire*, suddenly loomed up on the starboard side of *La Bourgogne* under a full, or nearly full, head of sail, proceeding at a high rate of speed, and, without any previous warning of her presence, except one blast of a fog horn, sounded but a moment before the collision, dashed suddenly into the starboard side of *La Bourgogne*, piercing and cutting her plates, penetrating deeply into the side of the steamer from her decks to below the water line, and ripping her whole starboard side, so as to cause an opening of a long and wide aperture through which the sea rushed with great and overwhelming force; that the hold and engine room of *La Bourgogne* soon filled with water, which caused her to list heavily to starboard; that the steamer was brought to a full standstill, and then signalled to the *Cromartyshire* for assistance; that the *Cromartyshire* paid no heed to this signal, and failed to perform her duty to stand by and render assistance to *La Bourgogne;* that the damage to *La Bourgogne* was such that it was apparent she was in danger of foundering, and the master and crew then engaged themselves in lowering the lifeboats and liferafts to save the lives of those on board, and before this could be accomplished the steamer foundered and sank; that in the disaster her master, all her officers, many of her seaman, as well as many passengers, were drowned. *La Bourgogne*, together with her cargo and pending freight, thereupon became a total loss.

Petition, pp. 7-8, fols. 19-23.

The petition also alleged (p. 8) that the collision was not caused by any fault or negligence of *La Bourgogne,* but was solely due to the fault and negligence of the ship *Cromartyshire,* in that the latter was proceeding at a high and dangerous rate of speed, with a full, or nearly full, head of sail, in a dense fog; that she was not provided with an efficient fog horn, and did not notify *La Bourgogne* of her presence until too late; that she did not have a sufficient lookout, and was otherwise shorthanded in officers and men charged with her navigation; and did not, when her officers and men learned of the presence of *La Bourgogne,* and of the danger and imminency of collision, endeavor to avoid the same; and then neglected her duty to stand by and render assistance to *La Bourgogne.*

The petition further alleged that the loss and damage caused by the collision were without the privity or knowledge of the petitioner.

Petition, pp. 8-9, fols. 24-27.

It also alleged (pp. 9-31, fols. 27-91) that various claims had been made against the petitioner for losses arising out of the collision amounting in the aggregate to an enormous sum, the greater part of which was for loss of life, and that numerous actions at law and suits in admiralty had been brought thereon and were then pending in various State and Federal Courts, and that because of the total loss of *La Bourgogne* and her cargo and pending freight, the liability of the petitioner and the amount or value of the petitioner's interest in the steamship and her pending freight was nothing, except the value of a

lifeboat and liferaft, which was estimated to be about one hundred dollars ($100.00).

Petition, pp. 9-31, fols. 27-91.

The petitioner claimed the benefits of the provisions of the Revised Statutes of the United States relating to limited liability of shipowners, and also claimed the right to contest its liability, and the liability of *La Bourgogne,* for any and all loss, destruction, damage or injury done, occasioned or incurred by the collision, and to that end *surrendered its interest* in the steamship and her pending freight, as provided by law, to a trustee appointed by the Court.

Record, p. 31, fol. 92.

(2) The Proceedings After the Filing of the Petition.

The petition was filed on the 15th of May, 1900, and, thereupon, an order of the Court was made appointing a trustee, a surrender and transfer of the petitioner's interest in the steamship and pending freight, was made in due form of law; and thereby the trustee became *vested with all the interest of the petitioner* in the wreck or remnants of the ship and her freight, if any.

Order, p. 34, fol. 101; Transfer, p. 36, fol. 107.

An order was then entered that a monition issue, to be directed to all persons interested, citing them to appear before the Court and answer the libel and petition, and make proof of their re-

spective claims on or before the return day, August 21st, 1900, before a commissioner named to receive the same.

See Monition and Order, pp. 41-42, fols. 122-125.

This order contained a temporary injunction against the prosecution of all suits "until the hearing and determination of these proceedings."

The monition issued accordingly.

Order, p. 38, fol. 114; Monition, p. 41, fol.

On the return day a large number of claims were presented to the Commissioner.

See pp. 43-48, fols. 128-143.

(3) The Answers to the Petition and Issues made thereby.

Answers were interposed by one George Deslions, William C. Perry, Administrator, and others.

Answers, pp. 82, 91, 103, 107, 116, fols. 244, 273, 309, 321, 346.

These answers denied that the collision was not caused by the fault or negligence of *La Bourgogne*, her officers or those in charge of her navigation.

See pp. 82, 92, 104, 108, 117, fols. 246, 276, 311, 324, 349.

They also denied that the loss or injury caused by the collision was without the privity or knowledge of the petitioner.

Pp. 83, 93, 104, 109, 117, fols. 248, 277, 312, 325, 350.

And they also denied that the pending freight was totally lost; and, further, that the amount or value of the petitioner's interest was nothing except the value of the lifeboat and liferaft.

Pp. 83, 93, 105, 109, 117, fols. 249, 278, 313, 326, 351.

Fols. 249, 278, 313, 326, 351.

(4) Affirmative Defenses to the Petition.

The answers then set up, as affirmative defenses to the petition:

I. That the collision was caused by the fault and negligence of those navigating the steamer, and also of the petitioner in that (1) the steamer was being navigated in a manner forbidden by law; and (2) that the petitioner had never made any proper regulations for giving commanders of its vessels, or the commander of *La Bourgogne*, such directions as would insure the navigation of the steamer in accordance with law.

II. That the petitioner was in duty bound to have the steamer fitted and equipped in all respects as required by the laws of the United States in respect to steamers carrying passengers, and

that petitioner had not complied with these provisions of law, and when the steamer sailed from New York, she was not provided with watertight bulkheads, or with boats, or with boat-disengaging apparatus, as required by the laws of the United States.

III. That the petitioner had not complied with the provisions of the statute, nor surrendered the vessel, nor its interest therein, nor the freight pending, nor put the same within the jurisdiction of the Court; and, that it received large amounts of freight and passage money for the voyage, which it retained and refused to put within the jurisdiction of the Court, and had received from the French Government a large amount of money as a subvention or subsidy for the voyage of the steamer, which ought to have been included in the pending freight, and which had not been surrendered.

Record, pp. 84-85, fols. 250-254; pp. 93-96, fols. 279-286; pp. 105-107, fols. 314-319; pp. 118-119, fols. 352-356.

One of the answers specifies the fault of *La Bourgogne* as proceeding at a dangerous and immoderate speed in a fog.

Record, p. 94, fol. 281.

(5) Hearing and Decision and Decree of the District Court.

The case came on to be heard before Judge Townsend on the issues thus made, on the 9th of

October, 1901 (p. 439, fol. 1316). The trial proceeded till October 11th, when the Court ordered all further testimony to be taken out of Court (pp. 553, 598, 609, fols. 1657, 1793, 1827). The taking of testimony out of Court proceeded till March 3, 1902 (p. 1122, fol. 3350). Judge Townsend rendered an opinion in favor of the petitioner on the 22nd of March 1902.

On the testimony the Judge found that *La Bourgogne* was going at about ten knots an hour in a dense fog, and, therefore, that she was in fault in not further reducing her speed, *though her ordinary full speed was seventeen knots.*

Opinion, pp. 1258-59, fols. 3759-60.

On the issues with regard to the limitation of liability he found upon the testimony that the collision happened without the privity or knowledge of the petitioner, and that the charges of the claimants that the petitioner had not made sufficient regulations to insure that the captains of its steamers should run them at moderate speed in a fog, and that the petitioner, with the knowledge that its captains did run at an excessive rate of speed in a fog, did not take measures to prevent the same, *were not proved.*

In respect to the freight claimed not to have been surrendered, the decision was that the voyage from Havre to New York was not part of the voyage on which she was lost, or the voyage whose pending freight should be surrendered; also that the freight and passage money prepaid for the voyage from New York to Havre on which the vessel was lost was not *pending* freight within the meaning of the statute and need not be surrendered, and

also that the petitioner was not obliged to surrender as freight any part of the subvention received from the French Government.

Record, pp. 1248-1255, fols. 3728-3748.

The Court also decided that the contention of the claimants was not proved in respect to a deficiency of lifeboats and life-rafts and boat-disengaging apparatus.

Record, pp. 1255-1257, fols. 3748-3754.

On the 22nd of March, 1902, the following decree made by Judge Townsend was entered in the cause:

"Ordered, adjudged and decreed:

First. That the prayer of the petitioner for a limitation of its liability for all losses, injuries, damages and other claims growing out of the loss or foundering of *La Bourgogne*, mentioned in the petition, be and the same is hereby granted as provided by the statutes of the United States in such case made and provided.

Second. That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and excluded from consideration in this proceeding.

Third. That the steamship *La Bourgogne* was at fault and to blame for the collison set forth in the pleadings in this cause.

Fourth. That the claims in this cause other than those for alleged damages for alleged negligence, resulting in loss of

life, which are hereby excluded, be and the same are hereby referred to Thomas Alexander, Esq., of New York, who is hereby appointed a commissioner to take testimony as to the amount of such claims and report the same to this Court, together with his opinion, with all convenient speed.

Fifth. That the petitioner has duly transferred and surrendered its interest in the value of the said steamship *La Bourgogne* and her pending freight by the transfer heretofore made to the trustee appointed in this cause, and that the value of such interest extends no further than the value of the lifeboat and liferaft mentioned in the said pleadings, and which the said petitioner has duly transferred to the said trustee."

Record, pp. 1265, 1266, fol. 3780, *et seq.*

(6) Proceedings Before the Commissioner.

On the 25th of September, 1902, hearings were commenced before the Commissioner for the purpose of ascertaining damages, in accordance with the decree of Judge Townsend of the 22nd of March, 1902, excluding, however, all claims for loss of life.

Record, p. 1383, fol. 4131.

On the 5th of May, 1904, the Commissioner made a report on all claims presented to him for damages other than those for loss of life.

Record, p. 1294, fol. 3867.

Exceptions were filed to this report on the part of the petitioner in respect to claims allowed, and

by the S. S. White Dental Company in respect to a claim disallowed.

Record, p. 1294, 1315, 1326, fols. 3867, 3930, 3962.

(7) Another Decree Entered by Judge Thomas.

The exceptions on both sides having been overruled, another decree was entered on the 11th of July, 1904, by Judge Thomas, which recites the making of an alleged interlocutory decree on the 22nd of March, 1902, by Judge Townsend, with an order of reference, and the report of the Commissioner, and the overruling of the exceptions thereto, and adjudges that La *Bourgogne* was in fault in reference to the collision, in that she was proceeding at an immoderate rate of speed in a fog, contrary to law, and that the petitioner is liable for the damages caused by the collision to each of the claimants whose claims were found to be established by the report of the Commissioner, enumerating them; and that the claim of the S. S. White Dental Company be disallowed, and that all claims which had been filed on behalf of persons claiming damages for negligence resulting in loss of life be disallowed and excluded from consideration in the proceeding; and that the petitioner is entitled to limit its liability for such damages, as are found against it, to the amount of the value of the steamer and her freight for the voyage, and there should not be included as part of the amount either the freight or passage money received by the petitioner for the voyage of the steamer from Havre

to New York, or for the voyage from New York to Havre, or the amount of money paid to the petitioner by the Government of France under the contract between the petitioner and that Government; that the costs be divided, those incurred in the determination of the question whether the plaintiff was in fault to be recovered by the claimants, and those incurred in the determination of the question whether the petitioner is entitled to a limitation of its liability, be awarded to the petitioner, payable primarily out of any fund in the hands of the trustee and upon payment of the costs so ordered to be paid to the claimants, they be perpetually enjoined from any further prosecution of their proceedings on the claims, and that all other parties be permanently enjoined from taking any proceeding at law, or otherwise, for the purpose of enforcing against the petitioner any claim for damages arising out of the collision.

Decree, pp. 1327-1330, fols. 3965-3975.

(8) Appeals from the Decree of Judge Thomas of July 11, 1904.

The notice of appeal by the claimants from the second decree (that by Judge Thomas of July 11, 1904) was filed July 21st, 1904.

Record, pp. 1331-1332, fols. 3977-3983.

The notice of appeal specified as the parts appealed from the following:

First. That claims for loss of life were disallowed and excluded from the consideration of the Commissioner.

Second. That the claim of the S. S. White Dental Company was disallowed.

Third. That the petitioner is entitled to limit its liability as specified in the decree.

Fourth. That there is not to be included in the amount to which the liability of the petitioner is limited either the freight or passage money received by the petitioner for the trip from Havre to New York or for the trip from New York to Havre, or the amount of the money paid to the petitioner by the French Government.

Fifth. That the costs of the proceedings be divided.

Sixth. That all persons who commenced any proceedings against the petitioner to recover any damage caused by the collision be perpetually enjoined from any further prosecution of said proceedings as specified in said decree.

Seventh. That all other parties be permanently enjoined by said decree.

Record, pp. 1331-1333, fols. 3977-3983.

On the same day, July 21st, 1904, the various claimants filed and served their assignment of errors.

Record, pp. 1334-1337, fols. 3986-3995.

This assignment of errors specified as errors, the several points decided against them in the decree of Judge Thomas of July 11, 1904.

On the same day, July 21st, 1904, the various claimants filed a petition of appeal repeating the same objections to the decree, which appeal was allowed.

Record, pp. 1338-1342, fols. 3998-4010.

On August 1st, 1904, the claimants took out a citation to the Circuit Court of Appeals at a term to be held in the City of New York on or before the 28th of August, 1904, from a decree of the District Court, ordering, adjudging and decreeing that the claimants are entitled to the respective amounts named in the decree, and that the petitioner is entitled to a limitation of its liability under the Statute.

Citation, p. 1343, fol. 4013.

In addition to the notice of appeal before referred to, filed July 21st, 1904, some of the claimants seem to have served additional notices of appeal, after the issue of the citation in substantially the same form with the notices filed July 21st, 1904.

Record, pp. 1344-1348, fols. 4017-4029.

On the 10th of January, 1905, the petitioner appealed from so much of the subsequent decree of Judge Thomas of July 11, 1904, as ordered and adjudged:

First. That *La Bourgogne* was at fault for the collision in proceeding at an immoderate rate of speed in a fog.

Second. That certain claimants should recover the sums referred to in said decree.

Third. That the costs of the proceedings should be divided (Petition, p. 2210, fol. 6612, allowance by Judge Lacombe, p. 2213, fol. 6622; Notice of Appeal, pp. 2214-2217, fols. 6624-6634); and the petitioner took out a citation to the Circuit Court of Appeals, dated and filed January 10th, 1905 (Record, p. 2218, fol. 6636).

The petitioner's assignment of errors was dated January 10th, 1905.

Record, p. 2219, fol. 6640.

(9) Abortive Attempt to Appeal from the original decree of Judge Townsend of March 22, 1902.

Notices of appeal by some of the claimants, dated the 11th day of March, 1903, and filed March 14th, 1903, addressed to the petitioner, and purporting to be an appeal from the original decree of Judge Townsend called in said notices by the appellants a *final decree,* entered on the 22d of March, 1902, appear in the record (pp. 2207-2209, fols. 6603-6610), but the record contains no proof of the service of such notices, nor any assignment of errors thereunder, nor any citation thereon to the Circuit Court of Appeals. It is assumed that the decree referred to is that of March 22, 1902, made by Judge Townsend.

Nor is there anything in the record to show that these appeals were ever prosecuted or brought to a hearing.

(10) The proceedings in the Circuit Court of Appeals on the Appeals from the subsequent or second Decree made by Judge Thomas on July 11, 1904.

The appeals from the subsequent decree of Judge Thomas of July 11, 1904, were brought on and heard by the Circuit Court of Appeals before Judges Wallace, Lacombe and Coxe.

They rendered an opinion by Judge Lacombe on June 23, 1905, which is found at pp. 2259-2275, folios 7058-7121 of the record. It is also reported in 139 Federal Reporter, p. 433.

A further hearing was had before the Circuit Court of Appeals in relation to the allowance of claims by the Commissioner, before the same Judges. This was decided February 22d, 1906. The opinion appears at p. 2329, fol. 7137, of the record, also reported in 144 Fed. Rep., 781.

Judge Wallace dissented as to the allowance of the claim of Deslions.

The only order or decree of the Circuit Court of Appeals entered upon these appeals is an order dated March 6th, 1906.

Record, p. 2291, fol. 7184.

This order recites that the cause came on to be heard on the transcript of record, &c., and it is "ordered, adjudged and decreed that the decree of said District Court be reversed without costs and the cause remanded to the District Court for modification in accordance with the opinion of this Court,

except as to that part of the decree as to claims other than those for loss of life, and as to which the decree below is affirmed with interest and costs. It is further ordered that a mandate issue to the said District Court, in accordance with this decree."

(11) The Points Decided by the Circuit Court of Appeals.

The particulars in which the subsequent decree of the District Court of July 11, 1904, by Judge Thomas is modified by the opinion of the Circuit Court of Appeals are as follows:

(1) Certain moneys received by the petitioner for freight and passage money on the voyage from New York to Havre, on which the steamship was lost, were held by the Circuit Court of Appeals to be pending freight within the meaning of the statute, thereby reversing the decision and decree of the District Court, that these moneys were not pending freight.

(2) The Circuit Court of Appeals also held that inasmuch as the claims for damages for loss of life could have been maintained in the French courts against the fund paid in limitation of liability, *the decree appealed from should be modified* accordingly, that is, in effect, that so much of the decree made by Judge Thomas July 11, 1904, as decreed that all claims which had been filed on behalf of persons claiming damages resulting from loss of life caused by the collision be disallowed and excluded from the consideration of the Commissioner, was reversed, and that such

claims should be heard and determined by the District Court, before the Commissioner, or in some other manner.

It will be observed that as to the claims for loss of life, not one of them has yet been adjudicated upon, or, indeed, brought to issue in respect to their validity.

(3) The Circuit Court of Appeals affirmed the decree of the 11th of July, 1904, made by Judge Townsend, (a) so far as it found that the loss and damage by the collision was without the knowledge or privity of the petitioner; and (b) so far as the petitioner was granted a limitation of liability under the statute; and (c) so far as it held that the petitioner was not required by the statute to surrender the freight or passage money on the voyage from Havre to New York; and (d) so far as it held that the petitioner was not liable for any part of the moneys recovered from the French Government.

The Circuit Court of Appeals also considered the question whether the decree of Judge Townsend, of March 22, 1902, was *a final decree* as claimed by the petitioner, and held that, in analogy to the case of a suit for infringement of a patent, resulting in a finding that there had been an infringement, and sending the case to a Master to report upon profits and damages, the first decree was not final.

Record, p. 2261, fol. 7065.

(12) The proceedings in this Court.

No mandate having yet issued to the District Court, the cause was removed here by writ of *certiorari* granted upon the petition of the claimants Deslions and others.

Questions to be Argued,

The questions that arise upon this hearing, therefore, are the following:

First. Was the decree of Judge Townsend of March 22, 1902, *a final decree* for the purpose of the statute allowing an appeal, so far as it awarded to the petitioner a limitation of liability, and *determined* that claims for loss of life should be *disallowed* and not brought before the Commissioner, and so far as it *determined* that the various sums which the claimants insisted should be paid in as pending freight were *not freight* for the voyage which the petitioner was obliged to surrender, or in respect to either or any of these matters?

Second. In the event that it shall be held that this decree was not final upon the question of limitation of liability, then, is the petitioner, on the proofs made, entitled to its limitation of liability?

Third. In the same event is the petitioner required by the statute to surrender the freight and passage money for the voyage from Havre to New York?

Fourth. In the same event, is the petitioner required by the statute to surrender any part of the money received by it as an annual subsidy from the French Government?

The further questions, (1) whether in the same event the Circuit Court of Appeals erred in requiring the petitioner to pay in the freight and passage money received for the voyage from New York to Havre, and (2) interest thereon at six per centum per annum and (3) in allowing claims for loss of life to be presented to the Commissioner, we understand do not arise on this proceeding, unless the Court shall grant the petitioner a counter writ of *certiorari.*

The question whether there was any liability for the collision which has been decided adversely to the petitioner by both Courts below, is of course not open to argument under the present proceeding, but may be raised if the Court grants our counter petition.

FIRST POINT

The decree of Judge Townsend of March 22, 1902, was a final decree.

(1) So far as it determined that the petitioner should be granted a decree granting its liability, and (2) that claims for loss of life were disallowed and not to be brought before the Commissioner for consideration, and (3) that each of the three specified items of prepaid passage money, prepaid freight and an aliquot part of the French subsidy were not pending freight; and (4) as the appeal was not taken by the claimants within the statuory period of six months after the entering of Judge Townsend's decree, the Circuit Court of Appeals had no jurisdiction to hear the appeal in respect to these questions, or either of them.

1.

Of the course of decisions as to what constitutes a final decree.

The Act establishing the Circuit Court of Appeals (26 St., p. 826 ch. 517), provides (Section 6) that those Courts shall have jurisdiction to re-

view by appeal "final decision" in the District Court, and (by Section 11), that no appeal by which any decree may be reviewed in the Circuit Court of Appeals shall be taken or sued out except within six months after the entry of the decree sought to be reversed.

26 St., p. 826, Ch. 517.

This proceeding was commenced on the 15th of May, 1900, by the petitioner, under the provisions of Sec. 4283, *et seq.*, of the Revised Statutes of the United States, for the purpose of obtaining a judgment of the Court that the petitioner's liability to those who had suffered damage in consequence of the loss of *La Bourgogne* was limited to the value of the vessel and her pending freight, and also to obtain a judgment that she was not in fault at all.

The issues made by the petition and answers have been heretofere stated (pp. 12-14). On these issues a large volume of testimony was taken, and on the 22nd of March, 1902, the Court (Judge Townsend presiding) rendered a decree, as above stated, which disposed of every question within the pleadings.

In *Ray vs. Law*, 3 Cranch, 179, it was held that a decree for a sale of mortgaged property, upon a bill to foreclose, is a final decree from which an appeal will lie.

Ray vs. Law, 3 Cranch, 179.

This case was followed in *Whiting vs. Bank of the U. S.*, 13 Peters, 5, where Story, J., says:

"In *Ray vs. Law*, it was held by this Court
"that a decree of sale of mortgaged premises,
"was a final decree in the sense of the Act of

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"Congress, upon which an appeal would lie "to the Supreme Court. This decision must "have been made upon the general ground that "a decree, final upon the merits of the contro- "versy between the parties, is a decree upon "which a bill of review would lie, without and "independent of any ulterior proceedings. In- "deed, the ulterior proceedings are but a mode "of executing the original decree, like the award "of an execution at law."

Whiting vs. Bank of the U. S., 13 Peters, 5, at page 14.

The decisions of this Court furnish many illustrations of the principle that a decree is *final for the purpose of an appeal, if it disposes of all the issues, and determines the rights of the parties on the merits*, and leaves nothing to be done but to carry the decree into execution.

Thus in *Forgay vs. Conrad*, 6 How., 201, it was held that a decree setting aside conveyances of land and other property and directing restitution was final, although it directed an accounting by a master, and retained the bill "for further decree in the premises."

Forgay vs. Conrad, 6 How., 201.

In *Thomson vs. Dean*, 7 Wall., 342, the rule established in *Forgay vs. Conrad, supra*, is recognized as the true rule on the subject. The decree directed an account.

Thompson vs. Dean, 7 Wall., 342.

A decree determining that a railroad company must carry the express matter of an express company at reasonable rates, is final, for the purpose of an appeal, even though accounts remained to be

settled as to compensation for transportation preceding the suit.

> "All such matters relate to the administration of the cause and the accounts to be settled under the present order are of the same general character as those of a receiver who holds property awaiting the final disposition of a suit. They are incidents of the main litigation, but not necessarily a part of it.
>
> The supplemental order made after the decree relates only to the settlement of the accounts which accrued pending the suit."
>
> St. Louis, I. M. & S. R. R. Co. vs. Southern Exp. Co., 108 U. S., 24, at p. 29.

The Washington, Georgetown and Alexandria Railroad Company filed a bill to enjoin the defendant from selling certain property conveyed to them as trustees by the Railroad Company.

An injunction was granted.

Subsequently a decree was entered which ordered that the injunction be dissolved, and directed a sale by the Bradleys, the trustees of the property in controversy, according to the deed of trust, "and *bringing of the proceeds into court* to abide further orders" (at p. 576).

Held, a final decree on the authority of *Thompson vs. Dean*, 7 Wall., 342.

> Railroad Co. vs. Bradleys, 7 Wall., 575, at p. 576.

In *Bronson vs. Railroad Co.*, 2 Black., 524, at p. 531, the Court said:

> "This decree is not final in the strict technical sense of the word, for something yet re-

mains for the Court below to do. But, as was said by Chief Justice Taney in *Forgay et al. vs. Conrad* (6 How., 203), 'this court has not theretofore understood the words 'final decrees,' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the legislature.'"

Bronson vs. Railroad Co., 2 Black, 524, at p. 531.

A decree of foreclosure directed the sale of mortgaged property to which two mortgage trustees made conflicting claims and reserved for future consideration the question of the distribution of the proceeds of the sale. Held, a final decree.

Bank vs. Shedd, 121 U. S., 74, at pp. 84, 85.

In a suit in equity to compel a transfer to the complainant of certain shares of stock, the bill was dismissed as against some defendants and relief denied "upon all matters and things in controversy," except a certain specified matter.

As to that matter, the case was retained and referred to a Master in Chancery. The date of this decree was June 8, 1885.

The Master in Chancery heard proofs and reported; and on July 14, 1887, the Court confirmed the report, decreed that the Chicago and Evanston R. R. Co. pay complainant $6,513, with interest and costs, denied all other relief and dismissed the bill against the remaining defendants for want of equity with costs.

From this latter decree the complainant appealed.

Held, that the decree in question, was a *final decree*, and the errors assigned, which related to it,

could not be considered on an appeal from the subsequent decree of July 14, 1887.

Hill vs. Chicago & Evanston R. R. Co., 140 U. S., 52.

> "If an appeal had been taken * * * and the decree had been affirmed, the Court below would have had nothing to do but to execute the decree which it had already entered. What remained to be done was merely in execution of what had been determined, such as the collection of the outstanding payments, settling the receiver's accounts, payment of costs, and the like; and this is no less so because some other creditor might turn up, and seek to come in under the decree. *The bringing of the fund into court was for the final distribution as decreed, and not to be held pending the ascertainment of the principles upon which it should be distributed.*" Per Fuller, C. J., in
>
> Hoffman vs. Knox, 50 Fed. Rep., 484, at p. 489.

A minority of the stockholders of the Winthrop Iron Company filed a bill in equity to set aside as fraudulent a lease made by the Iron Company to the Winthrop Hematite Company, and to have a receiver appointed to take possession of the property of the company and manage its affairs. A decree was entered setting aside the lease and appointing a receiver. The Iron Company, the Hematite Company, and the defendant directors, were ordered to surrender to the receiver all the property of the Iron Company. The decree further ordered an accounting before a master by the Hematite Company, and the defendant directors, of the profits of the leased property and of royalties on mines. *Held*, a *final* decree, "on all matters within the pleadings." (at p. 184). The Court said:

"The case is altogether different from suits by patentees to establish their patents and recover for their infringement. There the money recovery is part of the subject matter of the suit. Here it is only an incident to what is sued for."

Winthrop Iron Co. vs. Meeker, 109 U. S., 180, at pp. 184, 185.

A decree determining the priorities of lienors and creditors, directing the sale of the property affected and bringing the proceeds into Court, is *final* for the purpose of appeal; and is none the less so that the Court retains the fund in controversy, *for the purpose of distributing* it as decreed.

Lewisburg Bk. vs. Sheffey, 140 U. S., 445.

In Potter vs. Beal, 50 Fed. R., 860, at page 863, the Court said:

"The record states that the order was preliminary; but of course, this is not effectual, as it is for this Court, and not for the Circuit Court, to determine that question in all cases, and the determination is to be governed by the essence of what is done and not by the appellation given to it."

Potter v. Beal, 50 Fed. Rep., 860, at p. 863.

In a suit for specific performance of a contract to convey lands the decree directed the conveyance —"the form and terms of the said conveyance to be approved or changed on further directions by one of the Judges of this Court."

Held, a *final decree*, leaving nothing to be done except carry it into execution.

Held, also, *not reviewable on appeal from a subsequent decretal order, made more than a year later settling the terms of the conveyance.*

Long vs. Maxwell, 59 Fed. Rep., 948 (C. C. A., 4th Circuit. Opinion by Fuller, C. J.)

In a case of decree in partition, where sole issue was partition in specie, or sale, which determined such issue; *held, final* notwithstanding the case is kept open for purposes of sale by a master and distribution of proceeds.

East Coast Cedar Co. vs. People's Bank, 111 Fed. Rep., 446.

The Court by its decree, dated February 24, 1897, settled the rights of riparian owners in the waters of Beaver Pond Creek, but retained the cause for the purpose of ascertaining whether the decree was violated by the defendant, and appointed a Master to conduct the investigation. Such an investigation was had, and the Master found that the defendant had not violated the injunction, and a decree was thereupon entered dismissing the proceedings against the defendant with costs.

Held, that the first decree was *final,* notwithstanding the retention of the cause and the subsequent proceedings.

The Court in its opinion said:

"The main issue was clear, and that was whether the defendant company had the right to divert any of the water from its natural flow" (p. 590).

"The decree of February 24, 1897, *was final and conclusive* as to such contention" (p. 591).

"*The merits of the controversy between plaintiff and defendant were disposed of,* and could not again be reopened except on appeal from *that* decree" (p. 591).

Sanders vs. Bluefield Mfg. & Imp. Co., 106 Fed. R., 587, 590, 591.

Mr. Chief-Justice Fuller sat as one of the Judges in this case.

The case of *McGourkey vs. Toledo &c. Railway,* 146 U. S., 536, 544, is not only in entire harmony with the foregoing authorities, but reinforces our argument in that behalf.

It was said in that case that a suit for collision in the Admiralty being a suit for damages, until the damages are awarded there is no final decree, and that such a case is analagous to a suit in equity to establish the validity of a patent and to recover damages for its infringement. In such case there is no termination of the cause as between them till the damages are decided.

No such question was reserved or remained open under the decree of Judge Townsend of March 22nd, 1902. All that remained to be done under that decree was to administer the fund in which the petitioner had no interest as a petitioner or libellant in that suit, although as owner of the vessel it had an interest in any surplus of the fund, after satisfaction of all lawful claims thereon for damages.

The suggestion that another lifeboat or liferaft might be afterwards discovered which would require an additional decree of the Court has no force. Whatever remained of the ship and the pending freight passed

by the transfer to the trustee. The Court found among other things, that such a transfer had been made. No further decree was or could be necessary to vest the title of any part of the wreck or the freight in the trustee. Moreover the decree settled this very matter of what remained.

The real distinction is between decrees which dispose of the entire controversy between the parties and decrees that do not. The former are final.

The distinction is pointed out by the Court in the case last cited as follows:

> "There are none of these cases" (referring to cases cited) "which go to "the extent of holding a decree of this kind fi- "nal. While it (the decree) directed "the surrender of the rolling stock in question "to the petitioner, it did not purport to pass "upon his title to the same, and referred the "case to a master, in accordance with the "prayer of the bill, to take an account not only "of rents and profits,and of damages to the roll- "ing stock, but of 'all questions and matters of "difference' between the receiver and petitioner " 'growing out of the use and restoration of the "same.' This decree could not be said to be a "complete decision of the matter in contro- "versy or to leave ministerial duties only to "be perfomed, or to direct an accounting "merely, as an incident to the relief prayed for "in the bill."
>
> McGourkey v. Toledo R'way Co., 146 U. S., 536, at p. 550.

The present case is, therefore, clearly distinguishable from the case of McGourkey vs. R. R. Co, and is really enforced by it.

The first decree of Judge Townsend in this case left nothing within the pleadings undetermined.

The cases of *Craighead v. Wilson,* 18 How., 199, and *Beebe v. Russell,* 19 How., 283, referred to in the case last cited, were clearly cases of decrees *not final.* The further proceedings directed by the decrees were *necessary to a determination of the rights of the parties within the pleadings and the issues therein made.*

(2)

Of the cases of Limitation of Liability in which appeals have been taken from a decree like that of Judge Townsend of March 22, 1902, as a final decree.

The decided cases also show that *a decree sustaining the petition for a limitation of liability has always been considered and treated as a final decree for the purposes of an appeal, irrespective of any further proceedings which may be necessary to distribute the fund.*

In the *Annie Faxon,* 66 Fed. R., 575, the owners of the vessel petitioned the District Court for limitation of liability in respect to damages caused by the explosion of her boiler.

The Court directed as follows (p. 581):

> **"A decree will be entered that, upon payment into Court of the amount of the appraised value of the vessel and pending freight for the benefit of the several claimants, the libellants be forever released from all liability for damages on account of said explosion and wreck."**
>
> The *Annie Faxon,* 66 Fed. R., 575, at p. 581.

From a decree so entered an appeal was taken and decided; yet the Circuit Court of Appeals, obviously, had no jurisdiction unless the decree was *final.*

The *Annie Faxon*, 75 Fed. Rep., R., 312.

In *Parsons vs. Empire Transportation Co.*, 111 Fed. R., 202, the corporation instituted proceedings to limit its liability for loss of the cargo of a barge. The report shows (p. 205), that the District Court simply sustained the petition and granted the limitation. Upon appeal the decree was reversed and the petition denied; yet the Court had no jurisdiction unless the decree was *final.*

Parsons vs. Empire Trans. Co., 111 Fed. R., 202.

In *Gleason vs. Duffy*, 116 Fed. R., 298, (a proceeding by the owners of a vessel to limit their liability), the report shows that the decree from which the appeal was taken was very similar to the decree rendered by Judge Townsend in the case at bar. No suggestion was made that it was not final and appealable.

Gleason vs. Duffy, 116 Fed. R., 298.

If any doubt remains upon these authorities as to the final and appealable character of the decree of Judge Townsend of March 22, 1902, it must surely be removed by a consideration of the case of *Butler vs. Boston Steamship Co.*, 130 U. S., 527. In that case the steamship company petitioned the District Court for a limitation of its liability arising out of the loss of the steamship *City of Columbus.* Notwithstanding the issue of a monition and injunction, Butler filed a libel against the

steamship company in the same Court to recover damages for the death of one Elizabeth R. Beach, who lost her life in the disaster, and of whose estate Butler was administrator.

The claim made in the latter proceeding was that the statute relating to limitation of liability did not embrace claims for damages for loss of life, under the facts existing in that case.

The two cases were argued together on the pleadings and a statement of facts, to which the parties agreed; and two decrees were made which are set out in full in the report.

> Butler v. Boston Steamship Co., 130 U. S., 527, at pp. 537-8.

In the limited liability cause the decree from which the appeal was taken was as follows:

"It is found and decreed by the Court that the libellant is entitled to the limitation of liability for loss of life, and other damages, as claimed in said libel; and that evidence tending to establish the facts, claimed by the respondents in clause three of the agreed facts on file, is immaterial, and, therefore, inadmissible, and that the allegations in libellants' answer to respondents' motion that insurance money be paid into Court are true; and it is thereupon ordered, adjudged and decreed by the Court that the said respondents' exceptions to the libellants' answer to said respondents' motion that insurance money be paid into Court be overruled and their said motion denied; and that the exceptions of said respondents to the libel be overruled and their petition be dismissed."

> Butler vs. Boston S. S. Co., 130 U. S., 527, at p. 537.

Eliminating that portion of this decree which passes on the materiality of a certain class of evidence in the case, we find that the District Court decided two points only.

First. That the steamship company was entitled to the limitation of liability claimed by it in the libel; and

Second. That it was not required to pay into Court any of the insurance moneys collected upon the loss of the vessel.

The report of the case shows, as in the case at bar, that the ship, cargo and the property and effects of her passengers, were practically a total loss, "except a small part saved in a damaged condition, and of little value."

Butler vs. Boston Steamship Co., 130 U. S., 527, at p. 550.

If that decree was final—and it must be admitted that a decree treated as final by the Circuit Court of Appeals and so treated by this Court unanimously is thereby adjudged to be final—so is the decree of Judge Townsend of March 22, 1902, in this case, for it disposes in detail of every question between the litigants.

It is true that a controversy still remained as to the proportions in which parties claiming an interest in the fund should divide the proceeds of the property transferred to the trustee.

(3)

On the authorities presented, the petitioner, therefore, respectfully claims and insists that the Circuit Court of Appeals had no jurisdiction to review any matter or question determined by the decree of Judge Townsend of March 22, 1902.

All matters except the confirmation of the report of the Commissioner, had been

determined by the prior decree of Judge Townsend, of March 22, 1902; and the only question which the Circuit Court of Appeals had power to hear and determine, was the question of the allowance or disallowance of the claims reported by the commissioner, and the other questions as to the distribution of the fund arising on the proceedings subsequent to the final decree of Judge Townsend of March 22, 1902.

For the purpose of comparison we give the two decrees in parallel columns:

JUDGE TOWNSEND'S DECREE.	JUDGE THOMAS' DECREE.
That the prayer of the petitioner for a limitation of its liability for all losses, injuries, damages and other claims growing out of the loss or foundering of *La Bourgogne*, mentioned in the petition, be and the same is hereby granted as provided by the statutes of the United States in such case made and provided (p. 1266).	That the petitioner is entitled to limit its liability for such damages as are decreed as aforesaid, to the amount of the value of the said steamer and her freight for the voyage (p. 1329, fol. 3971).
That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and	That all the claims which have been filed in this proceeding on behalf of persons claiming damages for negligence resulting in loss of life caused by said collision

excluded from consideration in this proceeding (p. 1266, fol. 3781).	be, and the same are hereby disallowed and excluded from the consideration of the Commissioner in this proceeding (p. 1329, fol. 3971).
That the steamship *La Bourgogne* was in fault and to blame for the collision set forth in the pleadings in this cause (p. 1266, fol. 3781).	That the steamer *La Bourgogne* in the petition mentioned was in fault and to blame in reference to the collision in question, in that she was proceeding at an immoderate rate of speed in a fog, contrary to law (p. 1329, fol. 3966).
That the petitioner has duly transferred and surrendered its interest in the value of the said steamship *La Bourgogne* and her pending freight by the transfer heretofore made to the trustee appointed in this cause, and that the value of such interest extends no further than the value of the lifeboat and liferaft mentioned in the said pleadings, and which the said petitioner has duly surrendered to the said trustee (p. 1266, fol. 3782).	That there is not to be included in the amount of liability, either the freight or passage money received by the petitioner for the voyage of *La Bourgogne* from Havre to New York, nor for the voyage from New York to Havre, during which voyage the collision occurred, nor the amount of money paid to the petitioner by the Government of France under the contract between the petitioner and the French Government for the voyage on which the *Bourgogne* was lost (p. 1329, fol. 3972).
Refers all claims (except for loss of life) to	Confirms the Commissioner's report (pp.

the Commissioner, to take testimony and report (p. 1266, fols. 3781-2.

1328-1329, fols. 3967-3970).

Directs method of taxing costs (pp. 1329-1330, fols. 3972-3).

Directs petitioner to pay costs of claimants in proceedings against petitioner and thereupon enjoins such claimants (p. 1330, fol. 3974).

Enjoins parties who have not commenced proceedings from doing so. (p. 1330, fol. 3975).

The circumstance that the first decree did not contain a permanent injunction or restraining order, and that the second decree contained one, has no bearing on the question whether the first decree was a final decree subject to appeal under statute.

A restraining order is not essential to the determination of the rights of the parties. It is in the nature of an order in execution and enforcement of the decree. It is not necessary for the staying of suits. *The law itself stays them,* and all Courts, State and National, are bound to take notice of the legal effect of the action of the District Court in issuing its citation.

Providence &c. Co. vs. Hall Co., 109 U. S., 578, at p. 601.

So also the provision as to costs in the second decree does not make the first decree other than final. In most of the cases of decrees held to be final cited above the award of costs was by a subsequent order or decree.

SECOND POINT.

Assuming that the notices of appeal filed in March, 1903 (pp. 2207-2209, fols. 6603-6609) were intended as notices of appeal from the decree of Judge Townsend of March 22, 1902, and that the date of the decree given in the notice as March 22, 1903, is an error, these notices of appeal are wholly ineffective.

First, because the appeals were not taken till more than six months after entry of decree; and

Secondly, because they were not followed up or made the basis of an effective appeal.

(1.)

The decree in this case was entered March 22, 1902.

The notice of appeal was served in March, 1903 (pp. 2207, 2209, fols. 6603-6610).

This was more than the six months allowed by statute.

(2.)

A mere notice of appeal, not followed by a citation to give the Appellate Court jurisdiction and possession of the cause, is a nullity.

The cause actually heard in the Circuit Court

of Appeals was on appeals from the decree of Judge Thomas of July 11, 1904; and long before those appeals were taken the question of limitation of liability was *res adjudicata* by the decree of Judge Townsend of March 22, 1902.

THIRD POINT.

The District Court and the Circuit Court of Appeals correctly decided on the proofs made that the petitioner should be granted the limitation of liability provided by Section 4283 of the Revised Statutes.

I.

Of the statute and its construction.

The statute which was originally passed March 3d, 1851 (9 St., p. 635, chap. 43) was afterwards embodied in the Revised Statutes as Sections 4282-4287, as follows:

> "Sec. 4282. No owner of any vessel shall be liable to answer for or make good to any person any loss or damage which may happen to any merchandise whatsoever which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.

"Sec. 4283. The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

"Sec. 4284. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and [*owner*] [owners] of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

"Sec. 4285. It shall be deemed a sufficient compliance on the part of such owner with the requirements of this title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which

transfer all claims and proceedings against the owner shall cease.

"Sec. 4286. The charterer of any vessel, in case he shall man, victual and navigate such vessel at his own expense, or by his own procurement, shall be deemed the owner of such vessel within the meaning of the provisions of this Title relating to the limitation of the liability of the owners of vessels; and such vessel, when so chartered, shall be liable in the same manner as if navigated by the owner thereof.

"Sec. 4287. Nothing in the five preceding sections shall be construed to take away or effect the remedy to which any party may be entitled, against the master, officers, or seamen, for or on account of any embezzlement, injury, loss, or destruction of merchandise, or property put on board any vessel, or on account of any negligence, fraud, or other malversation of such master, officers, or seamen, respectively, nor to lessen or take away any responsibility to which any master or seaman of any vessel may by law be liable, notwithstanding such master or seaman may be an owner or part owner of the vessel."

Revised Statutes, Sections 4282-4287.

These sections of the Revised Statutes are in all particulars a substantial re-enactment of the Law of 1851, except that in that Act the first section, corresponding to Section 4282, contained a proviso that

"Nothing in this Act contained shall prevent the parties from making such contract as they please extending or limiting the liability of shipowners." Act of 1851 (*supra*). This was dropped on the Revision of the Statutes.

The Act of 1851 contained another section relating to the shipping of gold, silver, bullion and other valuable articles, and exempting the master and owner of the vessel from liability therefor unless the shipper at the time of lading gave a written notice of the true character and value thereof. This became Section 4281 of the Revised Statutes. The original Act, in all cases where the owner of the vessel was referred to, used the expression "owner or owners." This is abbreviated into the word "owner" in the Sections in the Revised Statutes.

But it has been held that the statute was for the relief of part owners as well as for one owning the entire vessel, and the liability is limited to the interest of the part owner, notwithstanding this change of language; and the reference to a part owner in Section 4287 clearly indicates the same intention.

In re Leonard, 14 F. R., 53, 56.
In re Meyer, 74 F. R., 881, 886, 897.
23 Stat., p. 53, Ch. 121, Sec. 18 at p. 57.

The purpose of the Act has been many times explained by this Court to have been the encouragement of shipbuilding, and of investment in ships, by relieving the owner or part owner from the stringent common law liability of a common carrier.

A reference to the debates in Congress which led to the enactment of the law of 1851 shows this very clearly.

The bill was introduced in the Senate by Senator Hamlin of Maine. It was advocated by the Senators from the Eastern maritime States, whose people were especially interested as owners of vessels.

it was opposed by the Senators from the agricultural States, whose people were more interested in the carriage of merchandise, cotton, grain, etc.

23 Congressional Record, pp. 331, 479, 713-719, 738, 776, 816.

In construing the Act, therefore, it should always be borne in mind that a reasonable interpretation, must adapt it to the case of the owner of a 16th or 32d part of a sailing vessel belonging to Bangor or Newburyport, as well as to the case of a steamboat owned by a corporation in New York or New Jersey.

The immemorial practice of the division of the entire interest in sailing vessels among part owners is recognized in the Act itself; and, although this was more plainly indicated in the original statute, it is still true of its re-enactment, with some condensation of language, in the Revised Statues.

Section 4282, or the first section of the Act of 1851, relates exclusively to losses by fire.

As has been so often pointed out, the legislation was suggested by the burning of the steamboat *"Lexington"* in Long Island Sound, in January, 1840, and by the decision of this Court, holding the owner of the vessel responsible therefor, at the January Term, 1848.

New Jersey Steam Nav. Co. v. Merchants Bank, 6 How., 344.

It has been said that up to that time shipowners were more or less ignorant of the enormous liabilities which they incurred, especially because of

their responsibility for the negligence of their servants, the master and mariners.

One principal reason urged for the enactment, as shown by the debates in Congress, was the great advantage which the shipowners of Great Britain enjoyed from a somewhat similar enactment for the benefit of shipowners, and that our mercantile marine might be put on the same basis.

The Act seems to have come before this Court for the first time at the December Term, 1860, in the case of *Moore vs. American Transportation Company*, 24 How., 1.

That case involved only the question whether the section relating to fire covered the case of fire on Lake Erie, or whether the case was within the exception of the seventh section, of a vessel used in rivers or inland navigation.

Mr. Justice Nelson there says, p. 39:—

"The act was designed to promote the building "of ships, and to encourage persons engaged in the "business of navigation, and to place that of this "country on a footing with England, and on the "continent of Europe."

And it was held that the exception of inland waters does not include the Great Lakes.

Moore vs. American Transportation Co., 24 How., 1.

Then follow, after a considerable interval, a series of decisions by this Court, expounding the meaning and application of the statute and putting at rest objections which tended to narrow its scope.

Norwich Company vs. Wright, 13 Wall., 104, at December Term, 1871, held that the Act was ap-

plicable as well to damage by collision to the ship as to injury to goods and merchandise.

Norwich Company vs. Wright, 13 Wall., 104.

The *"Benefactor,"* 103 U. S., 239, at October Term, 1880, held that the shipowner might, if he so elected, contest his liability in the same proceeding in which he claimed limitation of liability, or by a prior suit, and further held that the vessel was to be valued in her damaged condition.

The *"Scotland,"* 105 U. S., 24, at the October Term, 1881, held the Act to be applicable to *foreign* vessels.

The Scotland, 105 U. S., at p. 33.

See also The North Star, 106 U.S. 17

The Providence and New York S. S. Co. vs. Hill Manufacturing Co., 109 U. S., 578, at October Term, 1883, held, overruling the Supreme Judicial Court of Massachusetts, that loss by fire was within the third section of the Act, or *R. S. Section 4283.*

Providence and N. Y. Steamship Co., vs. Hill Mfg Co., 109 U. S., 578.

The *City of Norwich*, 118 U. S., 468, at October Term, 1885, held that the insurance on the vessel was not included in the interest of the owner, and did not constitute part of the fund to be distributed among the shippers in the case of limitation of liability.

Butler vs. Boston S. S. Co., 130 U. S., 527, at October Term, 1888, held that claims for personal injury or loss of life were within the act, as well as loss of or injury to property, the disaster being within the territorial jurisdiction of a State whose

statutes gave a remedy for loss of life by negligence. Butler vs. Boston Steamship Co., 130 U. S., 578.

The opinions in these cases and notably those in the cases of Norwich Co. v. Wright, 13 Wallace, pp. 116-122, and The Scotland, 105 U. S., pp. 24, 28, give all that can be gathered from the ancient and foreign codes and from foreign writers of authority as to the origin and general acceptance by the maritime nations of Europe of the great principle that the innocent owner or part owner of a ship is liable only to the extent of his interest in the ship and freight for the engagements and wrongful acts of the master and officers, and on surrender of the ship and freight is wholly discharged, which was by the Act of 1851 adopted as the rule of the maritime law of the United States.

Under the second Article of Title IV of the Marine Ordinances of Louis XIV, a translation of which is found in 30 Fed. Cases, 1206, and in 2 Peters Adm., Appendix III, it is provided as follows:

> "II. The owners of ships shall be answerable for the deeds of the master, but shall be discharged, abandoning their ship and freight."

Writers of authority all agree that by the Maritime Law the shipowners' liability, from time immemorial for loss or damage by collision, is limited to the value of the ship and freight and the shipowners' interest therein.

In Valin Commentaries, tom. 1, p. 568, it is said:

> "The better to oblige owners of ships to be diligent and careful in providing themselves with honest masters, it is by this article de-

cared (*ubi supra*) that they shall be answerable for the behavior of the masters that they put in their ships for any sum *not exceeding the value of their ships and their freight.*"

See also 3. Kent's Comm., §218;

4. Phillimore's International Law, 2d Ed., 628;

Valin, sur l'Ordonnance de la Marine, 1 2, tit. 8, Art. 2;

Cours de Droit, Comm. Mar. Boulay-Paty, Vol. 1, 263-298;

Pardes-sus, Droit Commercial, Part 4, tit. 2, Ch. 3, s. 2;

Emerigon, Cont. a la Grasse. Ch. 4, s. 11;

And per Ware, J., in The Rebecca, 1 Ware's Rep., 187, 195, 198; The Phebe, 1 Ware, 263.

The Consolato del Mare, Cap. 141, provides that in certain cases the ship herself and the managing owner, shall be liable to the merchant for the loss of his goods, but the other owners only to the extent of their shares:—

"E si la nau no bastava, e lo Senyor de la nau havia bens e altre loch, deven se m'vendre tanto en tro que l'mercader sia entregrat; mas los personers no sien tengute sino tant solament d'aco que la part valra que hauran en la nau."

A translation of which is as follows:

"And if the ship is not sufficient, and the Manager of the ship should have other property and possessions so much of them shall be sold as is necessary to indemnify the merchant; but the other owners shall not be holden for more than the value of the part they have in the ship."

So, again, ib., Cap. 182, if the merchants' goods are injured by reason of insufficient ground tackle, the managing owner is to pay for the damage for which the ship and all his goods are liable.

Upon contracts with reference to the ship entered into by his agent (committee, in the association called *commande*) the ship owner was liable only to the ship's value. (See *Ibid*, cc. 209, 244 *infra* 177."

The present statutory provision upon this subject, as embodied in the French Code of Commerce, adopting the Marine Ordinances of Louis XIV, so far as it affects the present question, is as follows:

"216. (Loi 14 Juin, 1841). Tout proprietaire de navire est civilement responsable des faits du capitaine, et tenudes engagements contractes par ce dernier, pour ce qui est relatif au navire et a l'expedition.

Il petit, dans tous les cas, s'affranchir des obligations ci-dessus par l'abandon du navire et du fret."

See Article 216 of the French Code of Commerce.

A translation of that provision is as follows:

"Article 216. Every owner of a vessel is civilly responsible for the acts of the master, and bound, as regards the engagements entered into by the latter, in whatever relates to the vessel and the voyage. He can in any case free himself from the above named obligations by the abandonment of the vessel and the freight."

In Holland and other continental nations, the liability of shipowners, not only for the contracts, but also for the torts of the master of the ship, has

for more than two centuries been limited to the value of the ship and freight.

Emerigon Contr. a la Grosse, Ch. 4, s. 11.
Boulay-Paty Cours de Droit Commercial. Maritime, Vol. 1, pp. 263-298.
See, also, The Mary Ann, L. R. 1 A. & E., 8, 11.

The contract of *commande*, or joint adventure of shipowners and merchants, corresponding in some respects to the *societe en commandite*, or partnership, with limited liability, of modern times, is perhaps the origin of the widespread doctrine of limited liability of shipowners.

This kind of association extensively prevailed in the Mediterranean in the Middle Ages, and is frequently mentioned in the *Consolato del Mare*.

See Perdessus, Lois Maritimes, tit. *Commande*.

As early as the beginning of the 17th Century the protectionist doctrine, or theory of limitation of liability, put forward upon grounds of public policy as a reason for limitation of liability of shipowners, seems to have prevailed throughout Europe.

Grotius, writing in the year 1625, says that the principle of limitation of shipowners' liability on contracts of the master prevailed in his day, and for a long time previously had prevailed in Holland, and he approved the principle as being consonant with natural justice and necessary for the encouragement of shippers.

Grotius, De Jure et Pacis, 1. 2 Ch., 11, Sec. 18.

He says:

> "Apud Hollandus ubi mercatura pridem maxime viguit * * * et nunc et olim constitutum ne exercitoria otiam universal exercitores amplius tensantur quam ad aestimationem navis ,et quorum quae in navi sunt.
>
> "Absterrem ter enim homines eb exercendis navibus si mtuant ne ex facto magistri quasi in infinitum reneamtur."
>
> Grotius, De Jure Belli et Pacis, 1, 2, Ch. 11, s. 18.

A translation of this is as follows:

> "In regard to the law of Holland in respect to the limited liability of merchants * * * it is now established universally that their risks are limited to the value of the ship and her pending freight.
>
> "And all persons having claims are limited in their judicial suits to this final recourse."

Limitation of liability for collision, it is true, is not expressly noticed; but the policy of protection, under discussion, which limited liability in the case of contracts, applied equally to protect owners from liability from their masters' torts.

The legislation and decisions in England:

In England it does not appear that this doctrine of limitation of liability was part of the British system.

But in the year 1734, however, by the statute of 7 George II, Chap. 15, the British Parliament passed an Act limiting shipowners' liability for loss of cargo by theft of master or crew to the value of the ship and freight.

In Button v. Mitchell, 1 T. R., 18, it was decided

under this Act that the owners were not liable beyond the statutory limit for a robbery of cargo in which one of the crew was concerned.

In Boucher v. Lawson, Cas. temp. Hardw. 85, it was held that the ship-owner was liable generally and without limitation for the acts of the master.

See also, per Buller, J., Yates v. Hall, 1 T. R. 75, 78.

In the petition of British ship-owners set out in the Journals of the House of Commons (Sess. 1733, p. 277) this decision of Boucher v. Lawson was referred to and the petitioners complained that

> "When they became owners of ships they did not apprehend themselves exposed to such hardship (as unlimited liability) or liable as owners to any greater loss than that of the ship and freight, and they protested against the insupportable and unreasonable hardship to which the British law, as understood at that time, exposed them, and to which no owners of ships in other trading nations are exposed."

They represented to the House that unless some provision be made for their relief, trade and navigation would be greatly discouraged, since ship-owners find themselves, without any fault of their own, exposed to ruin.

Journal House of Commons, Sess. 1733, p. 277.

The fact that Holland and other Continantal maritime nations had passed laws exempting ship-owners from liability beyond the vessel and freight would seem to have been the reason that

influenced the English Parliament in passing the Act of 7 George II., Chap. 15, above referred to.

By the Act of 26 George III, Chap. 86, the relief afforded by the previous Act was extended to cases of theft by persons other than the crew, and to cases of loss by fire.

Afterwards the limitation of liability in cases of collision was also established by the Act of 53 George III, Chap. 159.

This act, after reciting that it was expedient to encourage the owning of British ships, fixed the limit of the ship-owners' liability for damages to other ships and to cargo on board either of two ships in collision at the value of the ship sued and the freight she was earning or under contract to earn.

The history of the article of the French Code is reviewed in Lloyd v. Guibert, L. R. I. Q. B. 115; 6 B. & S. 100; and by Dr. Lushington in The Mary Ann, L. R. 1 A. & E. 8, 11.

A similar provision is to be found in the codes of Germany, Holland, Belgium, Italy and Spain, and it is believed every European country except Portugal.. (See Bynk. Quest. Jur. Priv. 1, IV c. 20).

All or nearly all these foreign authorities are quoted and recognized as establishing this principle of the maritime law by Mr. Justice Bradley in the cases above cited.

In the case of *Providence and N. Y. S. S. Co. vs. Hill Manufg. Co.*, 109 U. S., 578 (*supra*), Mr. Justice Bradley, who delivered the opinion of the Court in [redacted] of the cases in this Court above cited,

thus states the view of the Court with regard to the importance of th. Act, and the spirit in which it should be administered.

> "In these provisions of the statute we have "sketched in outline a scheme of laws and reg- "ulations for the benefit of the shipping inter- "est, the value and importance of which to our "maritime commerce can hardly be estimated. "Nevertheless, the practical value of the law "will largely depend on the manner in which "it is administered. If the Courts having the "execution of it administer it in a spirit of "fairness, with the view of giving to ship- "owners the full benefit of the immunities in- "tended to be secured by it, the encouragement "it will afford to commercial operations (as "before stated) will be of the last importance. "But if it is administered with a tight and "grudging hand, construing every clause most "unfavorably against the shipowner, and al- "lowing as little as possible to operate in his "favor, the law will hardly be worth the trou- "ble of its enactment. Its value and efficiency "will also be greatly diminished, if not entirely "destroyed, by allowing its administration to "be hampered and interfered with by various "and conflicting jurisdictions."
>
> Providence & N. Y. S. S. Co. vs. Hill Mfg. Co., 109 U. S., 578, at pp. 588, 589.

It is claimed on the part of the counsel for the claimants that the case of the *Main*, 152 U. S., 122 reverses or modifies the liberal rule of construction in favor of the limitation thus declared, and establishes the contrary rule that this statute being in derogation of the common law should be strictly construed.

The case of the *Main* and the rule of construction therein adopted relates not to the determination of the right to the limitation, but to the proper mode

of dealing with the question of the amount or extent of the fund resulting from that limitation.

The case related wholly to the question what should be considered freight in a case where it was conceded or adjudged that the right to the limitation existed.

The considerations affecting these two questions are radically different. The right of limitation is a right founded in public policy, which may be stated thus: If ship owners are held liable to shippers according to the rigid rules of the common law, or of the civil law, those liabilities may involve their entire fortunes and the loss of one ship and its cargo through the fault of the Master, may mean ruin to the ship owner.

This situation requires for the very existence of commerce that the rule of liability as between ship owner and shipper should be peculiar and entirely different from the ordinary rule of the common or the civil law, in respect to the liability of a person for the acts or defaults of his agent.

It is upon this reason of public policy that the principle of limitation of liabilty is founded; and as pointed out by Mr. Justice Bradley in the case above cited, it is only upon a liberal as opposed to a strict construction, that this principle can be beneficially administered or is of any real value.

But on the other hand, when it comes to the question of what the fund is that is to be distributed, no such principle is involved. Whether the freight moneys be great or small, whether the value of the vessel be great or small, their loss does not involve ruin to the ship owner.

Therefore the rule of liberal construction declared by the Court in the case above cited, does not apply to that situation, and the remarks of

Mr. Justice Brown, in the case of the *Main*, related only to the determination of the question what is freight, and not to the question whether the right to the limitation should be recognized or not. The case contains no suggestion that it is intended to overrule or modify the great principle so emphatically held in Prov. S. S. Co. v. Hill Mfg. Co., 109 U. S., 578, 588, 589.

Moreover, all the cases cited by Mr. Justice Brown, in support of a strict construction of what is freight are of a similar character.

The principle declared both in the Main and in the cases therein cited is this, that inasmuch as the award of limitation of liability in any case abridges the right of the shipper to recover which he would otherwise receive, the statute should be so construed as to abridge that right as little as possible, in other words, "to do the least injustice."

In Gale v. Laurier 5 Barn. & Cress., 156, the question was of the amount of the fund not of the right to limit the liability. The owner of a whale ship having been held entitled to limit his liability, the controversy was as to whether or not fishing stores of a whale ship, that is, harpoons, lances, lines, boats, etc., constitute part of the value "of ship and her appurtenances" within the meaning of the English Statutets.

Abbott, C. J., says, "that there is nothing in the act to require a construction more favorable to the shipowners than the plain meaning of the words imports. We think that whatever is on board belonging to the owner constitutes a part of the ship and her appurtenances."

The case of the Andalusian L. R., 3 P. D., 182, simply determined the question that a launch or uncompleted ship, though afloat, was not a "recog-

nized British ship," to which by the English Statute the right to a limitation was alone extended, the statute itself defining a recognized British ship as one that was registered, or capable of being registered.

In the case of The Northumbria, L. R., 3 Adm. & Ec., 6, the question was whether the amount of the fund to which the shippers had recourse under the statute should bear interest from the time of the collision.

It was admitted that the practice had been long continued to allow interest from the time of the collision in admiralty causes, and it was held that interest should be added, the Court citing Vice Chancellor Wood, in Striker vs. Hartland, 34 L. J., (ch.) 122, to the following effect: "It was quite clear that justice required that a debt which was due, but the payment of which was delayed, should bear interest."

Whether or not this case is pertinent to the question raised in the case at bar, whether the ship owner is chargeable with interest on any amounts that may be determined by this Court to be imbraced within the freight for the voyage, if it shall be held liable for any such, need not be considered at this time, but it is obvious that the question before the Court related, not to the question of the right to the limitation of liability, but to the amount or administration of the fund resulting from such a right admitted or adjudged.

Chapman v. Royal Netherlands, L. R., 4 P. D. 157, 184, was a case which involved only the distribution of the amount for which the ship which applied for a limitation of its liability was found liable, and the method of its distribution as between

the owners of the two ships and the shippers of cargo thereby.

What was said by Lord Justice Brett had no relation to the question whether the principle of limitation of liability was applicable to the case, but only to what was just as between the ship owners by the effect of an admittedly proper limitation of liability. His words were: "This statute whenever applied must derogate from the direct right of the shipowner against the other shipowner * * * and also derogate from his relative rights as regards other parties. It should be so construed as to derogate as little as possible consistently with its phraseology from the otherwise legal rights of the parties."

That is the decision in the case of the Main, and all the cases cited in support of the supposed rule of strict construction of the statute relate only to questions as to the extent of the fund resulting from such limitation or its administration, and are in no way inconsistent with, or modify, the rule of liberal construction on the question of limitation of liability announced by this Court in Providence & N. Y. S. S. Co. vs. Hill Mfg. Co., 109 U. S., 578, at p. 588.

A comparison of the first and third sections of the Act shows that Congress had an entirely different policy in declaring the exemption or limitation of liability of the shipowner in the case of loss by fire, from the case of loss by other causes.

By Section 4282, the first section of the original Act, the owner was exempted from all liability whatever for fire, unless it was caused by "the design or neglect" of the owner; but when it came to declaring the extent to which owners should be protected

for losses *by collision or other cause,* as provided in Section 4283, Congress did not provide for an absolute exemption in any case other than fire, but made the owner still liable to the extent of his interest in the adventure, the value of his interest in the vessel and her pending freight, and made the exemption depend, not, as in the case of absolute exemption in case of fire, upon the loss not being caused by the design or neglect of the owner, but upon its being *"without the privity or knowledge of the owner."*

That is to say, where the loss was by fire the owner still remained liable if the fire could be traced to any negligence on his part as a cause of loss. If it could not, he was absolutely freed from liability.

It was supposed, at first, that Section 4282 contained the only exemption to the owner in case of loss by fire; but the Court held that losses by fire were also within the third section, or Section 4283, as well as losses by collision or other cause.

Providence and N. Y. S. S. Co. vs. Hill Manuf'g. Co., 109 U. S., 578.

So that an owner has *two* exemptions in case of a loss caused by fire;

First, an absolute exemption if he has not been at fault for negligence himself;

Second, a partial exemption, though he may have been negligent himself, if the loss were without his privity or knowledge.

Thus, this Court said in the case last cited, Providence and N. Y. S. S. Co. vs. Hill, 109 U. S., 578, 562, 109 U. S., at p. 602:

> "But there is no inconsistency or repug-
> "nancy in allowing a partial exemption in
> "cases falling within the third section (*R. S.*,
> "*4283*); that is, cases of loss by fire happening
> "without the privity or knowledge of the own-
> "ers. They (*the owners*) may not be able un-
> "der the first section, to show that it happened
> "without any neglect on their part, or what a
> "jury may hold to be neglect; whilst they may
> "be very confident of showing, under the third
> "section, that it happened without their privity
> "or knowledge. *The conditions of proof*, in
> "order to avoid a total or a partial liability
> "under the respective sections, *are very dif-*
> *"ferent."*
>
> Providence & N. Y. S. S. Co. vs. Hill Mfg. Co., 109 U. S., 578, at p. 602.

This should be a complete answer to the suggestion, carelessly made by some of the State Courts, and Circuit Courts, and Circuit Courts of Appeals, that it was not the intention of Congress, by the provisions of the Act, to relieve shipowners of responsibility *for their own willful or negligent acts.*

This is true of the first section with regard to the total exemption in case of fire;

But it is not true with regard to the *third* section granting a limitation of liability where the test is *not* of negligence but of *"privity or knowledge"* of the shipowners in respect to the cause of the loss.

See *The Republic*, 61 Fed. R., 1091, *Parsons vs. Empire Co.*, 111 Fed. R., 202, at p. 208; *Hill Manf. Co. vs. S. S. Co.*, 113 Mass., 495.

Indeed, nothing could be plainer on a compari-

son of the first and third sections of the act (R. S., Sections 4282 and 4283), than that negligence of the owner *per se* is no ground for denying to an owner the partial exemption created by the third section.

When legislating with regard to losses by fire and an absolute exemption, the expression is "by design or neglect."

When legislating as to the partial exemption, the words of the statute are "without privity or knowledge."

Against *"design"* stands *"privity"*; against *"neglect"* stands *"knowledge."* The provisions of the third section necessarily excludes the idea of the limitation of liability being dependent on the absence of negligence.

Not only are the provisions different, but they are antagonistic.

Much of the argument in the Courts below against the petitioner was based upon the pretention that it would forfeit or lose the benefit of the limitation of liability, if its officers *neglected* to avail themselves of the means of knowledge with regard to the cause of the loss, and a great many decisions were cited, in which railroad companies were held liable for damage caused by their negligence in not informing themselves as to the practices of their employees.

Such citations as to railroad companies could be almost indefinitely extended. There is no statute exempting railroads in whole or in part for losses happening *without their privity or knowledge.* They are liable because of their negligence.

In a great variety of railroad cases the *failure to know* is negligence, and this argument is wholly fallacious and has no application whatever to the statute in question.

The statute, in using the term "knowledge," means *actual* knowledge. It cannot be distorted into meaning the *means* of knowing.

In many cases as to railroads knowledge and the means of knowledge are identical in their effect on this question of negligence; and so also this same class of decisions would be in point if the question was not on the limitation of the liability of the owner of the vessel, but simply of the liability of the vessel herself, *in rem*, or of her owner *in personam;* in which case, notwithstanding this statute, the owner of the vessel must still respond in damages for the negligence of the owner, or of the master and mariners.

So far as Section 4283 is concerned, therefore, that is, in cases of limitation of liability, the line is drawn, not between the negligent acts of the owner, and the negligent acts of the master and mariners, as has been sometimes alleged, but between loss and injuries caused *without* the knowledge or privity of the owner, and loss and injuries caused *with his knowledge or privity.*

And there is no authority or decision binding on this Court, which holds that the word *"knowledge"* here is anything less than *actual* knowledge, even though he may have been negligent in not knowing, or that by any construction knowledge can mean the means of knowledge. Knowledge also means guilty knowledge, not only knowledge of the fact from which the danger arises, but knowledge that the fact existing imports danger, otherwise the act fails of its purpose to protect the innocent and punish the guilty. The words are to be construed together, and with reference to the purposes of the act. The rule *noscitur a sociis* applies.

There has been considerable discussion in the cases as to the meaning of the word "privity" as used in Section 4283.

The expression "without the knowledge or privity of the owner or owners" was first used in the *British Statute, 7, George II, Chap. 15,* which relieved the owner beyond the extent of the value of his ship and freight in case of embezzlement or other unlawful act of the master or mariners without the privity or knowledge of the owner.

Statute 7, George II, Ch. 15.

The text of this law may be found not only in the British statutes at large, but also in *Abbott's Law of Merchant Ships,* 14th Ed., p. 638.

The preamble of that act is as follows:

"That it is of the greatest consequence and "importance to this kingdom to promote the "increase of the number of ships and vessels, "and to prevent any discouragement to mer- "chants and others from being interested and "concerned therein; and that it has been held, "that in many cases owners of ships or vessels "are answerable for goods and merchandise "shipped or put on board the same, although "the said goods and merchandise, after the "same have been so put on board, should be "made away with by the masters or mariners "of the said ships or vessels, without the "knowledge or privity of the owner or owners, "by means whereof merchants and others are "greatly discouraged from adventuring their "fortunes as owners of ships or vessels, which "will necessarily tend to the prejudice of the "trade and navigation of this kingdom."

Abbotts Law of Merchant Ships, 14th Ed., p. 638.

Bearing in mind the rule of the common law with regard to carriers, and some other bailees, that their liability in case of robbery rests on the conclusive presumption of privity with the robber (*Hall & Long vs. R. R. Co.*, 13 Wall., 365, at p. 372), the use of the word in this connection is perfectly intelligible; and although its application to some other causes of loss or injury is not so self-evident, yet the meaning that has been attached to the word "privity" in this statute implies *something more than knowledge*—some *participation or actual concurrence* on the part of the owner with respect to the cause of the loss,—something analogous to "privity" of the carrier in the embezzlement of the goods by his servant.

See

Quinlan vs. Pew., 56 Fed. R., 111, 117.

But the word "privity" does not (any more than the word "knowledge") imply or justify the inference that mere negligence of the owner in respect to the cause of loss was within the meaning of the statute.

It is quite possible that the fact that under the first section of the Act, Section 4282, the policy of Congress was not to exempt the owners in case of their actual negligence in the single case of fire, has led to this careless, though obviously erroneous, statement, that the same principle of interpretation applies to the third section namely Section 4283.

Where the matter under discussion is the case of loss by fire it is not an incorrect statement of the policy of the Act; and some of the cases in which this suggestion is made are cases of loss by fire.

The decisions of this Court sometimes referred to as sustaining this suggestion of the intention of Congress (*Moore vs. American Transportation Co.*, 24 How., 1; *Walker vs. Transportation Co.*, 3 Wall., 150; and *Craig vs. Continental Ins. Co.*, 141 U. S., 638), do not sustain the point.

In the case last cited, where the question was whether the knowledge or privity of a person employed by a corporation, the owner of the vessel, was the knowledge or privity of the corporation—Mr. Justice Blatchford, at page 647, cites, without comment, the remark of Gray, C. J., in the case of Hill Manufacturing Co. vs. Providence & New York S. S. Co., 113 Mass., 499, that

"The object of the statute was to exempt the owners of ships from the onerous liability to which they were held by the common law as common carriers or otherwise, for the acts or neglects of their servants or agents, or of third persons without their own knowledge, or concurrence, not to diminish their responsibility for their wilful or negligent act," and he quotes from Chief Justice Gray's opinion as follows:

"If a loss by fire is caused either by the design or by the neglect of the owners of a ship, the first section of the statute does not limit or take away their common law liability. If the owners are a corporation, the president and directors are not merely the agents or servants, but the representatives of the corporation, and the acts, intentions, and neglects of such officers are those of the corporation itself."

It was with reference to this last proposition that the first citation quoted above is made from the decision of Chief Justice Gray; and it was

pertinent to the case then before the Court, where the question was whether the knowledge or privity of a person appointed as a servant or agent, not being a general manager of the company, was knowledge and privity of the corporation; and it was held that it was not.

The case before the Massachusetts Court, moreover, was a case of loss by fire, and the language of the Court, as applied to such a loss and the exemption under the first section was strictly accurate.

There is nothing in this decision indicating any intention to call in question the distinction so plainly pointed out in *Providence & N. Y. S. S. Co. vs. Hill Manufacturing Co.*, 109 U. S., 578, at p. 602, and so obvious on the very words of the act itself.

Of the Burden of Proof.

Great stress is laid by the learned counsel for the claimants upon the question of the burden of proof. Judge Townsend at the trial, after considerable discussion, ruled that the burden of proof was upon the petitioner to show that the loss and damage were without the privity or knowledge of the petitioner. The Circuit Court of Appeals announce no different rule. The criticism on Judge Lacombe's opinion, to the effect that the Court held the burden to be upon claimants, is not sustained by an examination of the entire opinion, but is based upon a hypercritical reading of a single sentence. Both Courts found that the preponderance of the evidence on this issue was with the petitioner. On whichever side may be the burden of proof such a preponderance is all that is required in a civil controversy. When all the testimony is in,

the question of the burden of proof ceases to be of any consequence except in the very rare case of the proofs being exactly evenly balanced.

On the question, however, of the burden of proof, with great respect for the opinion of those Judges who have expressed the view that the burden of proof is on the petitioner in these cases, we beg to make the following suggestions. Whether or not the statute throws the burden on the petitioner, realy depends upon the view which the Court shall take of the nature and purpose of the statute. That nature and purpose must determine whether these words "without privity ~~and~~ knowledge" impose a condition on which a privilege is granted, or define an exception to a common and important right first in this country declared and made part of the maritime law by the statute of 1851.

The view taken by this Court in that series of great cases ending in th memorable declaration of Mr. Justice Bradley, above quoted, as to the spirit in which this law should be administered, that it was the adoption of the principle of the maritime law, as for centuries at least it had been held abroard, makes this statute not a mere amendment of the common law of bailees and carriers as theretofore held in this country, which it may be admitted, might be construed strictly and as a provision in derogation of the common law, but a new departure, the adoption *in solido* of a new principle of law applicable to ships and ship owners alone. This qualification on this common right, expressed in our statute by these words, was also adopted in substance from the foreign maritime law and has been otherwise expressed by Judge

Ware in the case of *The Rebecca* as without "blame."

It is noticeable that generally in the foreign codes no expressed qualification is made in the statement of the rule. They simply declare that on surrender of the ship and freight the right of limitation attaches. This leaves the exception or the qualification, if there is one, to be determined on general principles of jurisprudence. The only expressed exception is in the single case of the master and seamen becoming pirates, which appears in the Ordnance of Louis XIV, quoted on page 130 of our brief.

> "However, the owners of armed ships shall not be answerable for their crimes and piracies committed at sea by the crews of their ships any further than for the sums for which they may have given security except as they are partakers or accomplices in the crimes."

This is most significant as showing the kind of qualification or exception which by the maritime law will work a forfeiture of the general and admitted right of limitation of liability. It cannot be doubted that as to the second Section of the French Ordnance which provided "that the owners of ships shal be answerable for the deeds of the master but shall be discharged, abandoning their ship and freight" by the general principles of equity and fair dealing, similar fraud or wrong doing would work a forfeiture of the right. Fraud vitiates all contracts. Fraud forfeits any rights in any civilized system of jurisprudence. Whoever drew our statute has expressed with great felicity the same idea. With the careful and express exclusion of negligence as a ground for the denial

of the right, the words used, as hereinbefore shown, import exactly what is expressed in the Ordnance of Louis XIV—guilty knowledge or participation in the wrong. Fraud is never presumed. Deliberate wrong doing as a ground for forfeiting a right is never presumed. The charge in the case is a deliberate wrong doing on the part of the owner in the violation—a systematic violation—of a rule of law during a course of years by the captains of the line, approved by the petitioner, and whatever may be the technical right on the general subject of the burden of proof, there can be no doubt whatever that a charge of this kind, like a charge of fraud, must be proved by a preponderance of evidence by the party alleging it against a party whose rights would thereby be forfeited.

The question of the burden of proof under this statute is radically different from the same question under the Harter Act. The Harter Act expressly makes the immunity of the owner from liability dependent upon the exercise by him of due diligence in regard to the sea worthiness of the ship. There can be no claim that that provision is other than an amendment of the rule of the owner's common law liability a condition on which a privilege is granted.

II.

Of the defences to the petition.

The points relied upon to shew that this collision happened with the knowledge or privity of the petitioner or that it should not be granted limitation of its liability, as hereinbefore stated, are the following:

First, that the petitioner did not make proper regulations for the instruction of its masters in regard to the speed at which they were to run in the fog.

Second, that the petitioner's ships were customarily run at an immoderate speed in a fog to the knowledge of the petitioner;

Third, that the vessel was not equipped with life boats and life rafts required by the statutes of the United States, and that the boats were not fitted with proper disengaging machinery.

Fourth, That the petitioner did not surrender all the pending freight.

These points will be considered in their order.

The immediate cause to which the loss and damage suffered by all parties is to be traced, was the alleged wrongful or negligent act of the master in running *La Bourgogne* at more than a moderate rate of speed, in violation of the international rule on that subject.

The collision took place at about five o'clock in the morning. There had been a dense fog since four o'clock. The vessel was slowed down prior to the collision. The District Judge who examined the question with care found her speed to be ten knots (pp. 1257-1258, fols. 3755-59). The Circuit Court of Appeals reviewing the testimony was of the same opinion (pp. 2267, 2268, fols. 7091, 7092). The full speed of the Bourgogne was seventeen to seventeen and a half knots. While this petitioner has always contended that her

speed was in fact less than ten knots and moderate within the terms of the International Regulation, as interpreted by our Courts, we do not present the argument on that question at this time, since the Court has withheld its decision on our application for a counter writ of *certiorari*, and for the purposes of this argument it is assumed that the vessel was going at a speed of ten knots, which this Court has held to be not moderate for a vessel like the *Bourgogne*.

That the managing officers of the petitioner had no knowledge or privity with respect to that particular act of negligence itself is too obvious to require argument. The vessel was about a thousand miles at sea, and they were not on board. But the claimants rely upon alleged acts, and the knowledge of acts, extraneous to the immediate cause of the collision, for charging the petitioner with privity in respect to the cause, and they have properly assumed in their answers, as above indicated, that these charges are in the nature of affirmative defenses setting up extraneous facts, on which, of course, the burden of proof lies upon those who affirm such facts.

(1)

As to the regulations made by the petitioner.

As to the first of these alleged facts, that the petitioner did not make proper regulations for the instruction of the masters of its ships as to the mode of running them in a fog, even if it were true, or were proved, it would in itself only show negligence on their part in respect to the cause of loss, or

perhaps still less than negligence, a mere error of judgment as to what instruction they ought to give, or what it was their interest to give, in such a case, and would show neither privity nor knowledge.

Indeed, this contention of the claimants implies a duty on the part of the shipowner to instruct the master how he shall run his ship; but this idea finds no support either in the terms of the Act in question or in the relation between the parties.

It may well be held to be the duty of an owner towards the shipper to appoint a proper master; but if the master appointed is a proper master he is an expert in the science of navigation. He knows better than the owner every time how he ought to run his ship in a fog; he is not fit for his office unless he is fully versed in the duties of a master; unless he knows, among other things, the international rules for the prevention of collisions at sea, and how they ought to be observed.

The owner or part owner is not necessarily, nor is he presumed to be, an expert in navigation, any more than he is presumed to be an expert shipwright, who, of his own knowledge, can determine the question of the seaworthiness of the ship.

Disasters at sea result largely from three causes: The unseaworthiness of the ship, defects in the lading, and negligence and non-observance of rules of navigation. On none of these subjects is the owner presumed to have the knowledge of an expert. As to the seaworthiness of the ship, he must rely upon experts in that branch, and so as to the trim of the ship, and as to the method of navigation.

If we have correctly stated above the purpose of the Act in protecting ship owners, then it would

be erroneous to hold that there is any duty whatever on the part of an owner of the ship, or the owner of an interest in the ship, as such, to instruct his master, an expert in navigation, how he shall run his ship in case of fog.

In almost every case the master is more competent to instruct the owner or part owner on this point, than the owner to instruct the master, and no such obligation can be inferred either from the relation of the parties or from the terms of this Act.

And to hold that the limitation of liability is lost because the owner or part owner has not duly instructed the master in his duties as a navigator would be to engraft on this statute an exception or proviso contrary to its obvious meaning and purpose, and entirely inconsistent with the true test which the statute creates as to the exemption of the owner, which is that he is entitled to his limitation of liability unless he has knowledge of, or is in some way privy to, the cause of the damage.

But there is no foundation for the charge that the petitioner did not make suitable regulations, or give suitable instructions to its masters in relation to their duties in case of fog.

As early as December, 1884, the company made an order as follows:

> "Our Board of Directors, having seriously in mind the numerous collisions which daily occur at this season in the parts frequented by our steamers, we come to beg you to recall to all our captains, individually, the recommendations which we have always made to them, to use the greatest prudence in their navigation, and to never hesitate in certain doubtful cases to adopt the most suitable measures to assure the safety of their steamers, even if a loss of

time should result from so doing.

"You will insist upon it with them that in times of fogs the most active watch be kept on board their vessels and that all the prescriptions indicated in the rule as to collisions be strictly observed, as well by day as by night."

See Record, p. 969, fol. 2891, *et seq.*

And in 1891 the substance of this order was embodied in permanent regulations, as follows:

ARTICLE 293. "When the Company's vessels are in localities frequented by vessels, especially in foggy weather and during the night, the engineer on watch and the necessary men for maneuvering must be within reach of the apparatus for changing the speed. The order is given by the officer of the watch to the engine room, and mention is made in the ship's log and in that of the engineer, of the hour at which that order was given and received."

ARTICLE 394. "The Company's vessels conform to the International Rules for the purpose of preventing collisions. A printed copy of said rule is posted up in a conspicuous place in order that the officers may take notice of it.

"The prescriptions of said rule, relative to phonic signals to be caused to be heard in foggy weather, must be rigorously observed; besides, in said circumstances, a man must be placed aloft on lookout."

ARTICLE 395. "In conformity with the rules of international regulations, having for object the prevention of collisions, all vessels under steam which approach each other so that there may be risk of collision, must diminish their speed, or stop or go backwards, if necessary. All vessels under steam must, during foggy weather, preserve a moderate speed.

"The captain, under these circumstances, must diminish the speed of his engines, and, in agreement with the agent of Postes, the captain must make known by process verbal the

delays which such manouvre may have occasioned."

See Reglament de Service a bord (Petitioner's Exhibit 37) submitted to the Court.

Record, pp. 139, 145, 1029, 1030, 1031, fols. 416, 433, 3072, 3074 et seq.

The District Judge, Judge Townsend, said, with regard to the foregoing regulations, as follows:

"It is not clear that any further precautions than those established by the orders and regulations quoted above would have been practicable.

The question of rate of speed in a fog is one which cannot be determined by set rules, but must be left largely to the discretion of the officers of the ship. They are entrusted with the responsibility of the carriage of mails, freight and passengers, at the greatest speed which is consistent with safety. Their own lives, as well as those of the passengers and crew, are at stake.

The determination of the question, therefore, as to what is to be done in all the varying stages between a light haze and a dense fog, rests upon a great variety of circumstances and conditions, all looking toward the question of what is a moderate rate of speed in existing conditions."

Record, pp. 1261, 1262, fol. 3767.

The District Judge might have added, with perfect propriety, that representatives of all nations in the world, in maritime conferences, were not able to lay down *any rule* which would cover *every* case of fog; and it would be expecting the petitioner to be wiser on this subject than all the marine experts of the world.

The argument of the claimants' counsel that more explicit regulations than these could be made, seems to us absolutely untenable.

These regulations clearly direct the captains to navigate their vessels "*in conformity with the International Rules*" by preserving a moderate speed during foggy weather.

The situation of a commander of a vessel on the high seas is such that no specific directions can be given to him, and of necessity everything beyond a mere general caution, such as these regulatons embody, must be left to his judgment and discretion, to be exercised in the circumstances in each case as it may arise and according to the situation in which he finds himself.

For the same reason that Courts are reluctant to substitute their own judgments on matters of expert knowledge for that of experienced mariners who are on the spot with knowledge of the attending circumstances, the judgment of members of Boards of Directors of a corporation, being the owner of a vessel, on such matters should be held to be inferior to that of the experienced navigators whom they appoint to command the ship, or to act as its important officers at sea; and necessarily their duty is only to give general and not specific instructions as to the conduct of the officers of the ship at sea.

For an instructive example of the reluctance of Courts to substitute their judgment for that of expert mariners, on such a question, see

La Champagne, 60 Fed. Rep., p. 303.

(2)

As to the charge that petitioner's ships were run to its knowledge at excessive speed in fog.

The second affirmative defense of the claimants relied on in argument though not set up in the an-

swers, is, that to the knowledge of the petitioner, the ships of the Line were customarily run at an immoderate speed in fog. The claimants have endeavored to establish this proposition by several lines of proof:

First, rumor and general impression of the community as to all steamships, not particularly as to this Line.

Second, by the testimony of passengers who, from time to time have traveled on this Line and of some of the captains of the ships of this Line.

Third, from the record of adjudicated cases in which the Line has been held in fault on this ground.

That there is a popular impression, which has found expression by some Judges in their opinions, that the International Rule of navigation in regard to speed in a fog is not lived up to, need not be denied. But it is not evidence on which a particular Line can be condemned wholesale. The Circuit Court of Appeals says on this point:

> "Nevertheless, the Court cannot take judi-
> "cial notice that any particular line thus con-
> "stantly violates the law; nor can it hold the
> "owners of the line in damages upon a theory
> "that they are persistent lawbreakers, without
> "proof of the fact."
> (Record, p. 2270, fol. 7101.)

The claimants have referred, as if it were evidence, to the remarks of members of the International Conference at Washington.

This conference was held in the year 1889, nine years before the collision in question. If for no other reason, it should have been held incompetent as too remote, having no bearing on any custom, if custom could be shown in July, 1898 (p. 1187, fol. 3544).

But the remarks of these members of the Conference, are nothing more than echoes of a rumor or of unproved impressions in the community.

The claimants called six witnesses who had made voyages on the petitioner's line, for the purpose of showing that the petitioner's ships were in the habit of running at excessive speed in a fog.

Peters, pp. 570-579.
Levannoux, pp. 583-588.
Baruch, pp. 588-589.
Riker, pp. 589-593.
Steiner, pp. 603-609.
Burras, pp. 1048-1050.

These six witnesses, none of whom were experts or familiar with navigation of steam vessels, in general testified that during their voyages on ships of the Line there was no diminution of speed in a fog. Thus they swore to too much, showing themselves careless observers. In part their testimony was a conclusion from the fact that they had never noticed any delay in arrival after encountering fog on the voyage or difference in the daily run. One of them, Steiner, only remembered a single instance of fog in all his crossings.

Against this testimony the petitioner produced as witnesses, other passengers

Felsenberg, pp. 892-904.
Pagnon, pp. 904-915.
Benson, pp. 916-926.
Metz, pp. 988-990.

These four witnesses quite as intelligent certainly as the others, did observe the diminution of speed during fog and delay in arrival.

The testimony of passengers is obviously very unsatisfactory, as it is not based upon accurate ob-

servation and they have no means of measuring the speed of the vessel at a particular time.

Even the most intelligent of passengers is peculiarly liable to be mistaken as to his observation with reference to the speed of the vessel, as is shown by the testimony of the passenger, La Casse, who was most positive that the Bourgogne was going at full speed at the time of the collission (Record, pp. 273, 274), yet if there is any fact established in this case it is that she was very considerably slowed down. Her speed was about ten knots, as both courts below have found.

A very careful review of the testimony of these witnesses by the learned Judge who delivered the opinion of the Circuit Court of Appeals leaves nothing more to be said on this branch of the question (pp. 2271-2274, fols. 7104-7116).

The statement of claimant's witnesses that the ships arrived with great regularity and on time, from which in part the witnesses drew the conclusion that they never slowed in a fog, was also conclusively shown to be incorrect by the testimony of Mr. West, who had been the Superintendent of Docks of the Line in New York, though not now in its service (pp. 926, 927-931, fols. 2762, 2766-2777.)

The claimants also called three of the petitioner's captains Poirot (pp. 319, 972-978, fols. 957, 2900-2918), Santelli (pp. 309, 958, fols. 926, 2858), and Fajolle (pp. 345-376, fols. 1037-1126), but they signally failed to prove by them any such custom.

Captain Poirot, who had been in the service seven years and a half, and never had but one collision, and in that was exonerated from blame by the Court (pp. 321, 326, fols. 961, 962, 977), was not even asked by the claimants any question as to usage; but when recalled at the trial by

the petitioner, he testified as to his own practice that he always slowed in a fog, diminishing his speed in proportion to the density of the fog, and having reference to the power to stop and to steer. That he could not answer as to others, but he did not believe there was any custom to run at full speed in a fog (pp. 972, 974, fols. 2000, 2005, 2007).

Captain Santelli, who had been found in one case to be in fault for running the *Touraine* too fast in a fog, in 1894 (p. 961, fol. 2867) denied any such custom (pp. 958, 961, 962, fols. 2858, 2868, 2871).

Capt. Fajolle who had served in the French Navy twenty-five years and with the Company two years and a half (p. 346, fols. 1037, 1038) was examined July 25, 1900, having just completed a voyage in the *Champagne* from Havre (pp. 346, 360, fols. 1037, 1078.) He was asked no question as to the custom, but was examined as to what he did in respect to speed on that voyage. He had fog on the voyage (p. 357, fol. 1070) for three hours. On the night before arrival at New York the fog was thick (p. 361, fol. 1081). The *Champagne's* full speed was 17½ knots (p. 364, fol. 1081, 1092). Order was given to diminish speed to half speed (p. 367, fol. 1101). Her half speed is 12 to 13 knots (p. 367, fols. 1105, 1106). During the fog he ran at that speed except when he heard something or knew of some danger (p. 370, fol. 1110). In doing so he understood that he was conforming to the International Regulation to run at moderate speed in a fog (p. 371, fols. 1111-1112). This at most is proof of one isolated case of misindgment or misconduct long after the time as to which custom is

alleged, and is no proof of the alleged usage at the time of the collision or at any other time.

The petitioner produced one witness, Laisne, 4th Engineer of the *Bourgogne*, one of the survivors of the disaster. He testified that he was chief of his watch when on duty (p. 485, fol. 1455). He had served on several ships of the Line. Whenever the siren blew indicating fog they always made arrangements to slow down and to close the watertight compartments in case orders should be given from the bridge (p. 636, fol. 1908). He denied emphatically the testimony of the witnesses who testified to the ships of the line going at full speed in fog and testified to the slowing of the engines in fog (p. 885, fols. 2639-2640.) He also testified to the frequency of delays on arrival consequent upon slowing in bad weather (pp. 886, 887, fols. 2643-2645).

It may also be observed that unless it is made out, as matter of fact, that such custom existed, and that the officers of the petitioner had knowledge of such custom on the part of their captains, the question of rules, and notices to the captains of their duty, certainly becomes wholly unimportant.

It is only in case the Court is satisfied that such a custom existed that any possible duty can have been imposed upon the petitioner to instruct the captains with regard to their duty in a fog; and then only if it was proved that the managing officers knew of the custom.

And even then it would seem that the neglect of that duty was at most negligence or an error of judgment, which cannot affect the right of the petitioner to its limitation of liability, unless the fail-

ure to intervene is so gross a fault as to indicate a purpose to approve the custom.

Records were also introduced of decisions of courts condemning the ships of the petitioner, and also other records exonerating them in cases of fog.

Ships of the Line were found in fault as follows:

La Bretagne, May 7, 1887 (pp. 1171-1185, fols. 3496-3539). Both ships were found in fault.

La Normandie, May 18, 1889 (58 Fed. R., 427).

La Touraine, September 10, 1894 (pp. 1164-1170, fols. 3477-3495).

On the contrary they were exonerated as follows:

La Bourgogne, Feb. 29, 1896, 76 Fed. Rep., 868, affirmed 86 Fed. Rep., 475, and application for writ of *certiorari* denied by this Court, 172, U. S. 646

La Champagne, July 4, 1898, Record, p. 2270, fol. 7102, *et seq.*

(There is an error in the date of the case last cited. It should be Aug. 9, 1887; see III, *Revue International de droit Maritime*, pp. 543-546).

The ships of the line were also exonerated from faults in navigation in the following cases:

The Homer Ramsdell Co. v. La Compagnie Géneralé Transatlantique, 63 Fed. R., 845; affirmed in the Circuit Court of Appeals, and again by this Court in 182 U. S., 406.

Also in the case of The Switzerland, 38 Fed. R., 853.

The latter case was reversed by the Circuit Court of Appeals, 60 Fed. R., 461; but the opinion of Judge Benedict in the court below is submitted to the attention of the Court as the views of a most distinguished Admiralty Judge on the facts of the case as they impressed him.

As the Circuit Court of Appeals very justly says, with regard to this last item of evidence (pp. 2270, U. S., 646, fol. 7102):

> "During the eleven years preceding the loss "of the *Bourgogne* there appear to have been "three occasions when steamers of the peti- "tioner's Line were in collision with other ves- "sels in a fog, and were held by the court which "investigated the accidents to have been going "at excessive speed (citing the above cases)."
>
> "These three cases are not important, and "they lose all persuasiveness when it is seen "that subsequent to the last of them there are "only two reported occasions when steamers of "petitioner's line were in collision with other "vessels in a fog and in both cases the court "held petitioner's vessels to be going at mod- "erate speed and free from fault."

And the Circuit Court of Appeals justly observes and concludes from all the evidence bearing on this question of custom in respect to speed:

> "Estimates as to speed given by passengers "who are not experts are generally unsatis- "factory Upon the proof as it stands we can- "not find that the petitioner's officers know- "ingly tolerated or encouraged the running of "its steamers at excessive speed in fogs or "were negligent in failing to enforce the rules. "Certainly they used due diligence in securing

"officers of experience and ability. We con-
"cur in the opinion that the disaster was done,
"occasioned or incurred without the privity or
"knowledge of the owners."

Record, p. 2274, fol. 7117, *et seq.*

(3)

Of the alleged fault of the petitioner in not producing the logs of its steamers.

In connection with the attempted proof of a custom among the ships of the Line, the claimants insist that the petitioner was at fault on the trial in not producing the log books which from time to time were called for.

It is even claimed that some presumption arises against the petitioner as upon the suppression of testimony.

The claimants' counsel throughout his discussion of the case in the Court below referred to the non-production of log-books of petitioner's ships, as a ground for denying the limitation of liability.

A.

Of the order of Judge Brown that the log books of the Bourgogne and of Captain Deloncle for two years before the collision be produced on the trial.

The order of Judge Brown requiring the production of these log-books was made very nearly *three years after the collision*, May 15, 1901 (p. 170, fol. 508).

Of course the log books of *La Bourgogne* for the particular voyage upon which she was lost went down with her.

It is shown by the testimony of Mr. de Bocande that when the order in question was made he transmitted the same to the Home Office of the Company, and received a report, which is marked "Petitioner's Exhibit 35," showing that these old logs had not been preserved.

(P. 1216, fol. 3632, de Bocande, Record, p. 991, fols. 2958, *et seq.;* see also Simon, p. 474, fols. 1421, *et seq.*)

Although there was some question made at first whether this report should be received as explaining the loss of the logs, it was finally received in evidence without objection except as to its *materiality* (pp. 468, 475, 993, 995, fols. 1404, 1424, 2963-2968).

This was a sufficient explanation of their non-production.

The order to produce was made on a mere affidavit of opinion of counsel that the books would contain material evidence.

(Affidavits, pp. 165-167, fols. 495-500, Order, p. 170, fol. 508.)

That order was not proof of their existence. When they were called for, counsel declared that they had no such books (p. 606, fol. 1817). This left it for the other side to produce secondary evidence of their contents, or if they doubted the assertion of counsel, to produce evidence of their existence before their non-production could raise any

question of suppression of evidence. Such a charge of misconduct must be sustained by proof.

There was no proof of the existence of these books when they were called for, and the testimony showed the practice of the company was not to keep them, except in cases where suits were commenced, or a question raised requiring their retention.

(Simon, p. 474, fol. 1422; de Bocande, p. 993, fol. 2962).

The obvious reason for not preserving old log-books beyond the year in cases where no accident intervenes or litigation arises, rests upon the fact that the French Statute of Limitations, quite differently from ours, requires many claims to be made within twenty-four hours, followed by an action within thirty days and forecloses all claims and rights of action within one year.

(See Record, p. 1028, fols. 3069-70.)

A log-book, therefore, of more than one year old is absolutely of no value, and no fault whatsoever can be imputed to the company for not preserving them beyond that time, with ninety or more steamers of the line in commission, the accumulation of useless log books and the room necessary for storing them can be easily imagined in case they were preserved.

The petitioner's counsel on the trial offered, however, of his own motion, to produce any log books that the petitioner might be able to procure. This offer was not accepted.

(Record, p. 606, fol. 1817.)

The claimants' counsel cited cases to the effect that the party who has *in his possession* books or papers which may be material to the case of his opponent has no moral right to conceal them from his adversary.

These citations are inapplicable to the facts of the case.

The simple answer is that the petitioner had not such books or papers *"in its possession."*

There was no authority whatever for Judge Brown's order.

R. S. §724, which allows an order to be made for the production of books and papers before trial, applies only to *actions at law.*

Bischoffsheim vs. Brown, 29 Fed. R., 341.
Havermeyers, &c., vs. Compania, &c., 43 Fed. R., 90.
U. S. vs. 28 Packages, 28 Fed. Cases, No. 10561.

See also

Hanks' Dental Assn. vs. Tooth Crown Co., 194 U. S., 308.

There is no other rule or statute authorizing such an order.

The order had absolutely no sanction or effect as such.

As an opinion of the Judge of the Court in which the cause was pending it was no doubt a guide to counsel as to the limits of time for which this class of documents would be regarded as material. But considering the limit named by the Court of two years before the collision and the restriction of the order to one steamship and one captain and the terms of the order to show cause and the form of the affidavit, it may be taken to be virtually a de-

cision that log books two years or more after the collision of other ships and captains would be immaterial. (Affidavit p. 165, order to show cause p. 164, opinion pp. 166, 167, order p. 170).

B.

Of the alleged failure to produce the log books of the captains called as witnesses in 1900 on their subsequent examinations.

It was also objected in the Court below that the log books produced by Captains Santelli, Poirot and Fajolle when they were first called, and which they had then been subpoenaed to produce, were not retained by them, or obtained and brought into Court, when they were afterwards examined. On the proofs they were clearly excusd from doing so.

Claimants gave notice of the taking of the depositions *de bene esse* of the three Captains of the line when they happened to arrive in New York on their regular voyages, and they were subpoenaed to produce the logs of the ships they then commanded.

1. Captain Fajolle of the *Champagne* July 24, 1900 (p. 338, fol. 1013).

2. Captain Santelli of the *Touraine*, Aug. 7, 1900 (p. 307, fol. 920).

3. Captain Poirot of the *Lorraine*, Nov. 28, 1900 (p. 319, fol. 956).

They severally appeared and had their logs with them.

Captain Fajolle was thus subpoenaed before the cause was at issue and before the return day of the monition and when the petitioner's counsel was

absent from the city, and on notice of less than twenty-four hours.

(The original petition was filed May 15, 1900, p. 6, fol. 16. The first answer was filed October 31, 1900, p. 91, fol. 271. It was not verified till August 28, 1900, p. 86, fol. 256. The return day of the monition was August 21, 1900, p. 39, fol. 117.)

Strenuous objections were taken on behalf of the petitioner to proceeding under these circumstances as premature and irregular but the objections being referred to Judge Thomas it was held by him that the witness should be sworn and the taking of his deposition should proceed (pp. 338-345, fols. 1014-1034). The hearing was resumed and the witness sworn, July 25, 1900 (pp. 345, 346).

The witness had the log of his ship with him but under instruction of counsel for the petitioner, refused to submit it to the counsel for claimants for examination (p. 354, fol. 1060).

After a long examination of the witness and his refusal to answer several questions, and objections to others the matter was adjourned to a time to be fixed by the Commissioner on the return of the witness to New York, and to give an opportunity to submit to the Court the questions which the witness had refused to answer and also those objected to (p. 374, fol. 1122).

Claimants' counsel could have offered the logs in evidence but apparently had not sufficient confidence that it would aid him to do so, and although he well knew that the witness was but the temporary custodian of the logs while captain of the ship for the voyage, consented to the adjournment without obtaining from the Commissioner or from the Court any direction as to the custody or future production of the books.

The witness reappeared Jan. 15, 1901 (p. 384, fol. 1151). He no longer had the logs, having handed them over to the agent of the company at Havre at the end of his voyage in accordance with the rules of the company (p. 385, fol. 1153). Claimants' counsel, taking the ground that the subpoena served in July required him still to produce the logs, after an unsuccessful appeal to the Commissioner to instruct the witness to that effect, had the matter adjourned to Feb. 13, 1901, giving the witness notice that he would require him then to produce the logs (p. 386, fol. 1156).

On Feb. 13, 1901, the witness reappeared (p. 386, fol. 1157). He then testified that when he finished his voyage in July he turned over the logs to the agent of the company at Havre (p. 386, fol. 1158). It appeared also from his testimony that claimants' counsel had addressed the witness a letter on January 15, 1901, in which he had stated that the Court had decided that the logs must be produced, and he notified the witness to have them with him on February 13, 1901, telling him that in case he did not produce them he would, in counsel's opinion, be liable to punishment for disobedience, and suggesting that if the matter was brought to the attention of the company they would put no obstacle in the way of his bringing the logs with him, as the writer believed (Letter, p. 389, fol. 1166). The letter enclosed a copy of the subpoena of July, 1900 (p. 390, fol. 1169). Although the witness admitted receiving the letter, he had made no effort to get the logs from the company (p. 381, fol. 1159). He did not regard the letter as an order of the Court (p. 388, fol. 1163). He felt himself obliged to obey the orders of the company to turn over the logs at the end of the voyage (p. 392, fol. 1174).

A question then being put to the witness whether the company had given him orders not to produce the logs mentioned in the subpoena, the question was taken before the Court (Judge Brown) (p. 392, fol. 1174), and a long discussion ensued (pp. 392-407, fols. 1174-1207), ending in a decision that that question should be answered (p. 407, fol. 1207).

The witness's examination then proceeded before the Commissioner (p. 407, fol. 1208), and he testified that he had received no orders not to produce the books (p. 407, fol. 1208), and being further questioned as to why he had not made effort to get the logs again he testified that he gave the subpoena to the agent at Havre —that he thought he thereby discharged his duty—that he was merely a servant of the company and it was not for him to give orders to the company—that it was the rule for the captain to give up his logs at the end of the voyage (pp. 401-408, fols. 1201-1218). Although claimants' counsel gave notice on the basis of these proceedings that he should move for an attachment against the witness for a contempt for not producing the logs (p. 406), he evidently thought better of it, and no further proceedings were taken.

It is very evident that Mr. Benedict in stating in his letter that the Court had decided that the logs must be produced, meaning that the witness was required to produce on the adjournment the same logs which he was required by the subpoena to produce at the original hearing, went beyond the fact. There was no such decision, and, in fact never has been in this case.

It is not pretended that in Captain Fajolle's case any such question was passed on by the Court. The remarks of counsel before Judge Brown in the

final discussion above referred to in Capt. Fajolle's case show that the decision intended to be referred to in this letter was in another case, that of Captain Santelli (p. 397, fols. 1190-1191).

Capt. Santelli being subpoenaed to appear and be examined *de bene esse* Aug. 7, 1900 (p. 308, fol. 920) had apppeared having with him the logs of the *Touraine*, the ship he then commanded. Claimant's counsel demanded that the witness submit them to his examination. Witness refused (p. 313, fol. 937).

Objections having been taken to questions put to the witness, the matter was adjourned and the parties were heard by Judge Brown (p. 313, fols. 938-939).

Judge Brown made a written memorandum of the points decided Sept. 22, 1900. One point decided was "2. Any log of steamers in the possession or under the control of the captain being a witness should also be produced; neither the said log nor the book of instructions being such books as are exempt from production" (p. 316, fol. 946).

This was embodied in the same language in a formal order filed Oct. 16, 1900 (p. 318, fols. 953, 954).

The question had not arisen at that time and was not decided whether the original subpoena required the witness Santelli to produce again on his further examination to be thereafter had the logs which he originally produced.

But the question had been distinctly raised in both cases whether the captains could be required on subpoena to produce at all these books of which they were only temporary custodians, and whether such logs of voyages more than two years after the wreck of the *Bourgogne* were competent or

material as evidence in this case. And it was evidently this question whether they could be subpœnaed to produce the logs in their temporary possession which Judge Brown passed on in September, 1900.

Capt. Santelli was produced on the trial as a witness in continuation of his deposition on Dec. 24, 1901 (p. 939, fol. 2801). He was produced under a stipulation made between the counsel when he was previously before the Commissioner (p. 939, fol. 2800). He was no longer a captain of the line but was employed by the company at Havre as inspector. He did not have the logs with him that he had when first subpoenaed. He did not know when he left Havre that he was to be examined in this matter (p. 940, fols. 2803-2805). He left the logs at Havre in charge of the company (p. 940, fol. 2806).

Capt. Poirot was subpoenaed to give his deposition on Nov. 28, 1900. By consent the matter was adjourned on account of the absence of petitioner's counsel, on counsel agreeing to produce the witness on the adjourned day (p. 312, fols. 936-938).

On April 16, 1901, the witness appeared and the matter proceeded (p. 317, fol. 951).

He had been subpoenaed to produce the log books of his steamer in November, 1900 (p. 323, fol. 968). He did not have them with him in April, 1901. He had not been told to bring them (p. 323, fol. 968). He had them before the Commisioner in November and took them back to the ship, the *Lorraine*, which had since been dismantled. He handed the logs over to the company. It is the custom to return them to the company at Havre at the end of each voyage (p. 323, fols. 968-970). When his examination was

adjourned in November he was told by the Commissioner that he must attend again. The witness having testified that he expected to return in four weeks Mr. Benedict notified him that he was bound under the subpoena to have produced the logs at that time and that his failure to do so was in fact disobedience to the Court, but he added that he supposed he was not given to understand that he was required to produce them (p. 327, fols. 981-982). The witness being asked if he would produce the logs at the adjournment said they did not belong to him and being asked if he would endeavor to get them said that he would inform the officers at Havre what was said to him here (p. 328, fols. 983-984). The matter was then adjourned and the Commissioner directed the witness to attend on May 14, 1901 (p. 329, fol. 935). Mr. Benedict gave notice that he would move to punish the witness for contempt if the logs were not produced (p. 329, fol. 985).

The matter went on on May 15, 1901 (p. 330, fol. 988). The witness not then having the logs testified that he related to the officer at Havre what had happened, to which said officer made no reply (pp. 330-331, fols. 988-992). He also testified that when he was here before, on the earlier hearing, the Commissioner told him to come back on May 14, and that he asked whether he added anything more and the Commissioner replied that he added nothing more (p. 330, fol. 989). And before signing the deposition he requested that there be added that when the Commissioner was requested by Mr. Benedict, after notifying him to appear on May 14, to inform him, that he was required by the terms of the subpoena to produce the logs, he understood the Commissioner to refuse so to instruct

him, that he asked if the Commissioner added those words, and he understood that the Commissioner did not add them (p. 333, fol. 998).

Mr. Benedict stated that after this occurred he gave notice to the witness that if the logs were not produced he would move to punish him for contempt. To this colloquy between the witness and Mr. Benedict, "the Commissioner had nothing to say" (p. 333, fol. 999).

To the above remark of Mr. Benedict the witness wished it added that he understood he was to obey the instructions of the Commissioner and not the special instructions of Mr. Benedict; that he thought he had done all that was required when the Commissioner directed him to appear and did not order him to bring any books with him.

The Commissioner then said that after instructing the witness to attend he further informed him that the subpoena spoke for itself (p. 367, fols. 1000-1001).

On this record a motion was made to punish the witness for contempt, which however was apparently abandoned (pp. 336-339, fols. 1006-1011).

The witness was recalled for the claimants on the trial Dec. 24, 1901, (p. 972, fol. 2900), but he was not examined on the subject of the log books, except to verify his testimony in another case as to the custom to return the logs at the end of the voyage (pp. 877, 878, fols. 2615-2618).

On the 16th of April, 1901, claimants' counsel obtained from Judge Brown the order to show cause why the Petitioner should not be required on the trial to produce all the logs of *La Bourgogne* and of all other steamers on voyages between Havre and New York during the *three* years before July 4, 1898, or such other order or relief as to the Court should seem just (p. 164, fol. 491).

Mr. Benedict's affidavit, on which this order to show cause was obtained, refers to the fact that several captains had been subpoenaed to bring their logs and had refused to allow him to examine them, and that a motion was then pending to punish one of them for contempt, and also that it had been testified that at the end of each voyage it was the custom to send the logs ashore (p. 166, fols. 496, 497).

On May 15, 1901, Judge Brown endorsed on the papers his decision: "I have given much thought to this motion, but cannot write *in extenso*. I conclude to order the logs of the *La Bourgogne* only to be produced for two years prior to July 4, 1898" (p. 167, fol. 499).

This decision was embodied in an order hereinbefore referred to adding only the logs of any steamer during the same two years commanded by the captain of the *La Bourgogne* at the time of the collision (p. 170, fol. 509).

The foregoing is a full statement of what appears in the record in respect to the non-production of the logs by the captains which is alleged as a ground of complaint against petitioner.

These witnesses were foreigners and examined through an interpreter.

They were entirely justified in giving up their logs at the end of the voyage in accordance with the rule of the company. Nothing had happened to give them to understand that it was their duty to retain them or to ask to retain them for future use on an adjourned examination.

The subpoena in a strange language to them certainly gave them no such idea, even if it would mean that to an American. As matter of law it seems only to mean that the books should be produced on the return day.

As servants of the company their adherence to the rules of the company is to be commended and not made ground of censure.

Claimant's counsel have only themselves to blame for the failure to get in this evidence if it would have been material. The matter was wholly under their control. In the first place, they might have offered the logs when first produced before the Commissioner. They would then have been marked as exhibits and copies made, if, as is probable, the logs being in actual use on the ship, must have been taken away by the captains.

In the next place, when the hearings were adjourned the Commissioner or the Court could have been asked to make an order for their future production. Instead of this, counsel consented to an adjournment without any such precaution.

The subsequent efforts to obtain the aid of the witnesses to secure their return were ill advised and deserved to fail.

It is evident that the witness Poirot was not made to understand that he was required to get them back.

It was quite natural for the witness Fajolle to regard the orders of Mr. Benedict as of no importance and not orders of the Court.

But further, the whole matter of the production of logs, how far it was material, and how far it should be required as material, was, or under the order to show cause could have been, brought before Judge Brown in April, 1901. It is quite evident from his opinion that he regarded two years before the collision as a reasonable time for proof of custom at the time of the collision, and he granted the motion only as to this one steamer and this one captain, and either claim-

ants' counsel did not see fit to urge the materiality of logs two years after the collision, or failed to convince the Court of such materiality. At any rate this opportunity to obtain relief in respect to these particular logs was not availed of.

Moreover, by following up his numerous threats of contempt proceedings, counsel for claimants could have easily tested his right to have the captains produce the logs again under the subpœnas.

And it was always open to the claimants by commission to procure the evidence in Paris.

Causes are to be decided on the testimony adduced on the trial, not on what might have been, but is not proved, unless in very exceptional cases clearly made out of the suppression of evidence and damage worked thereby, of which cases this certainly is not one.

Nothing that appears in the record justifies the ground taken by the claimants in the Court below that the limitation of liability of the petitioner, if otherwise the right to it is shown, was forfeited, or in any way affected, by any alleged misconduct on the part of the petitioner in regard to the non-production of the logs that were called for, either generally, or with these witnesses.

The utmost effect of the failure to produce is, there being evidence of the books not being preserved, that claimants could have put in secondary evidence of their contents if held material. The matter of the logs is not even referred to in the opinions delivered below. It evidently was not considered to be a matter of sufficient importance to be specially noticed. It is to be presumed, however, that in weighing the evidence the judges gave it careful and all due consideration. The case was

properly determined on the proofs adduced by the parties respectively, not upon speculation as to proofs that might have been adduced.

(4)

There was an entire failure to prove that the Bourgogne was not fully fitted, manned and equipped according to the laws of the United States, or that the petitioner's right to its limitation of liability was lost by reason of any such defect.

This defense, if it existed, rests upon Sections 4488 and 4489 of the Revised Statutes of the United States, which are as follows:

> "Sec. 4488. Every steamer navigating the ocean or any lake, bay, or sound of the United States, shall be provided with such numbers of lifeboats, floats, rafts, life preservers and drags as will best secure the safety of all persons on board such vessel in case of disaster; and every seagoing vessel carrying passengers, and every such vessel navigating any of the northern or northwestern lakes, shall have the lifeboats required by law, provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such vessels are under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water. And the board of supervising inspectors shall *fix and determine*, by their rules and regulations, the kind of lifeboats, floats, rafts, life-preservers and drags that shall be used on such vessels, and also the kind and capacity of pumps *or other appliances* for freeing the

steamer from water in case of heavy leakage, the capacity of such pumps or appliances being suited to the navigation in which the steamer is employed."

"Sec. 4489. The owner of any such steamer who neglects or refuses to provide such life-boats, floats, rafts, life-preservers, drags, pumps or appliances, as are, under the provision of the preceding section, *required by the board of supervising inspectors,* and approved by the Secretary of the Treasury, shall be fined One thousand dollars."

R. S., Sections 4488, 4489.

It will be observed that Section 4488 provides that "Every steamer * * * shall be provided with such numbers of life-boats, floats, rafts, life-preservers and drags as will best secure the safety of all persons on board," under the authority conferred by Section 4405, as follows:

"Sec. 4405. The supervising inspectors and the supervising inspector-general shall assemble as a board once in a year. * * * *The board shall establish all necessary regulations required to carry out in the most effective manner the provisions* of this title, and such regulations, when approved by the Secretary of the Treasury *shall have the force of law."*

R. S. Section 4405.

The board consituted as required by the statute made a rule as follows:

"Rule III. 12. The total capacity of life-boats, or of life-boats and life-rafts, on steamers navigating the ocean, except steamers of 100 gross tons and under, hereinafter provided for, shall not be

less than the capacity given according to tonnage in the following table:

Gross Tons.	Total Capacity of Boats
Steamers over * * * * *	Cubic Feet * * * * *
7,000 and not over 7,500	5,670

This rule, under Section 4405, above quoted, has the force of law, and is, therefore, a legal declaration that 5670 cubic feet of boat capacity "will best secure the safety of all persons on board" of this steamer.

The above is a complete answer to the statement of claimants' counsel that the Board is not given any power to fix the number of boats or the amount of boat capacity.

The Board of Inspectors are the sole arbiters of this matter, as well as other matters relating to the equipment of steam vessels.

We quote the following provisions of the Revised Statutes:

> SEC. 4400. All foreign private steam-vessels carrying passengers from any port of the United States to any other place or country shall be subject to the provisions of * * * section forty-four hundred and eighty-eight, forty-four hundred and eighty-nine, forty four hundred and ninety-six * * * *and shall be liable to visitation and inspection by the proper*

officer, in any of the ports of the United States, respecting any of the provisions of the sections aforesaid.

R. S., Section 4400.

"Sec. 4403. The supervising inspector-general shall * * * produce a correct and uniform administration of the inspection laws, rules and regulations.

R. S., Section 4403.

"Sec. 4406. All collectors, or other chief officers of the customs, and all inspectors within the several districts, shall enforce the provisions of this Title against all steamers arriving and departing."

R. S., Section 4406.

The testimony of both claimants' witnesses and petitioner's witnesses shows that the petitioner complied with the law; and the Court's finding, that the contention of claimants as to insufficiency of lifeboats is not proved, is abundantly supported.

The petitioner called James A. Dumont, Supervising Inspector of Steamboats, who, at the time of his examination, had held that position for twenty-six years. He testified that his duties are prescribed by the statutes—Sections 4402 and 4403 of the Revised Statutes of the United States—and that the Board, of which he was then the chief officer, had general supervision of the local inspectors in the several ports.

He was asked about the regulations of the Board as to the number and capacity of lifeboats in force in the month of July, 1898, and testified that Section 12 of Rule III is the only regulation in relation to ocean steamers.

(Record, p. 1098, fols. 3275-3280).

He then testified:

Q. What memoranda have you in your office officially in reference to the last inspection of the *Bourgogne,* and especially concerning her lifeboat and liferaft capacity?

A. There is the report of June 30, 1898, District of New York, which gives *La Bourgogne* gross tonnage, 7,395 number of passengers, 1019; number of officers and crew, 217; total passengers and crew 1,236. Number of boats provided in section 12 of rule 3, 12; capacity 5,404 cubic feet; total capacity of the same 5,404; number of rafts, 4; total net capacity of rafts in cubic feet, 350. 8. Boatage capacity of rafts in cubic feet, 1,200; sum of total capacity of boats and boatage capacity of rafts in cubic feet, 6,604; total carrying capacity of boats and rafts in the number of persons, 660."

The total capacity in cubic feet required by the rules and regulations for a steamer is 5,670 cubic feet, whereas, on board the *La Bourgogne* there was 6,604 cubic feet.

"Q. I believe you did not state the date of that inspection. Have you any?

A. I can give you the date of it; *La Bourgogne* was inspected March 29, 1898.

Q. How often are such inspections made?

A. Annually. That is regular inspection annually and in many ports there is not much chance of the then annual inspection.

Q. Then according to the figures that you have just mentioned in connection with the requirements of your rule, the *Bourgogne* had an excess of lifeboats and liferaft capacity?

A. Yes, sir.

Q. Will you kindly state how much more lifeboats and liferaft capacity the *Bourgogne* had then required by the rules of the Board?

A. 934 cubic feet."

(Record, pp. 1099-1199, fols. 3280-4.)

On cross-examination General Dumont testifies:

"Q. If she (*La Bourgogne*) had aboard more passengers than 660, would she have been provided with a sufficient number of lifeboats as would best secure the safety of all on board.

A. Practically, yes. Because that was all the boats she could carry without interferring with the management of the boat. Carrying more boats would create more danger than the lack of boats. I would state that as a general principle."

(Record, p. 116, fol. 3333.)

The claimants called Peter C. Petrie, for five years a United States local inspector of steam vessels, and eighteen years in the service. On cross-examination he testifies:

"Q. I wish you would tell the Court whether or not that certificate [respondent's Exhibit A, (page 1159)] shows that the *Bourgogne* had the requisite number of lifeboats and liferafts required by the inspectors for a ship of her class?

A. Yes."

(Record, p. 538, fol. 1613.)

* * * * * * *

"Q. If the *Bourgogne* only had lifeboat and lifecraft capacity for 660 people, will you please state why you granted a certificate that she had the requisite number of lifeboats, and life-boat capacity, when it was possible for her to carry more people.

A. Every ship of the *Bourgogne* class for ocean steamers, we boat them according to that rule; not according to the number of passengers they carry. That rule is laid down for our guidance that every ship of a certain tonnage must carry a certain number of boats.

Mr. Benedict: No; it says she shall have not less than a certain number of boats.

The Witness: The cubic feet of boats; it comes to the same thing."

(Record, p. 541, fol. 1622.)

This witness was examined before the Court.

The claimants also called George W. Wilmurt, Assistant Inspector of Steam Vessels for the Government since 1879, who inspected *La Bourgogne*.

On cross-examination he testified:

"Q. You say you inspected this steamer *La Bourgogne?*

A. Yes, sir.

Q. Did you find that she had all the lifeboats and liferafts and lifesaving appliances necessary under the law?

A. Yes, more; she was overloaded and she was overstocked with life—you see there 1,236 life belts covered the class that she was classed for, with passengers and crew; she had 1,340, so she was over.

Q. So she had more life preservers than the law required?

A. Yes; the law required 1,236 and she had 1,340.

Q. You couldn't have passed and certified that the *Bourgogne* was properly equipped with lifeboats and life preservers if the law had not been satisfied, would you?

A. No, sir; I am subject to dismissal and fine, both, and imprisonment if I do; and then I have to qualify before a notary public when I turn my report in.

Q. Who acts upon your report as inspector?

A. The local inspector, Captain Petrie.

Q. Do you know whether upon your report, Captain Petrie passed the *Bourgogne* and certified to her having satisfied the law with respect to lifeboats, life preservers and other appliances for saving life.

A. I only know there was no remark made on my return of inspection, and the ship was classed and got her certificate, but it was not necessary to notify me, unless it was wrong—unless my report was wrong."

Q. Do you know whether your report was

acted upon and affirmed by the local inspector?

A. My report must have been considered correct or she would not have been passed with her papers.

Q. And she would not have been permitted to leave port, would she?

A. No, sir.

Q. What was the general condition of *La Bourgogne* as to seaworthiness when you inspected her?

A. My report says that the previous inspection, which was a year before, 'only ordinary repairs,' to clean the ship up and paint, etc.; and I see here 'the hull seaworthy and safe for business assigned'—that is, as an ocean passenger."

(Record, pp. 1055-1056, fol. 3150, *et seq.*)

This witness was also examined before the Court.

The argument of claimants' counsel that the Board of Inspectors never attempted to fix the maximum boat capacity is untenable.

The rule of the inspectors provides that there shall not be less than the capacity given according to the tonnage in the table, to wit: 7,000, and not over 7,500 gross tons. *La Bourgogne's* tonnage was 7355. The rule required 5,670 cubic feet of boat capacity. She had 6,604 cubic feet, which is 934 cubic feet in excess of the amount required by the rule, so that there being an excess of boat capacity above that required by the rule, such excess must be considered as the maximum.

Dumont (U. S. Chief Supervising Inspector of Steamboats) (Washington) Record page 1099, fol. 3281).

It is claimed also that *La Bourgogne* was not provided with a boat-disengaging apparatus, such as is described in Section 4488 of the Revised Statutes.

There is no evidence in the case that there was, to use the words of that section, a "suitable boat-disengaging apparatus, so arranged as to allow boats to be *safely launched*" while vessels are under speed or otherwise.

Of course, the question of what is suitable *must be determined by the Board of Inspectors;* and the evidence is that there was no suitable apparatus to serve the object of the statute in existence, as will be seen by the testimony of the witnesses called by the petitioner.

Thomas Mooney, the designing engineer of the Roach shipyard, testified:

"Q. Are you familiar with the lifeboats of the *Bourgogne?* A. Yes, sir.

Q. Do you know what boat-disengaging apparatus she had? A. She had a block and fall with a little link, like.

Q. Do you know of any other appliances in general us at the time of the collision which were superior to the boat-disengaging appliances that the *La Bourgogne* had?

A. There is none in my opinion; there is none.

Q. And there was none at the time?

A. No, sir.

Q. Are you familiar with a patent appliance known as the Standard Automatic Releasing Hook?

A. I am.

Q. Is that appliance in general use?

A. It is not.

Q. And therefore it was not in general use in the summer of 1898?

A. No, sir.

Q. Do you know anything of its merits, if it has any merits?

A. I konw something of its *demerits.*

Q. Will you state what they are, if you know, as a practical appliance? A. There is great danger of those pins rusting fast and then when you go to pull one or the other, one end may disengage the boat and spill everybody out; and next the lifeboat may not be just water borne, the seas come up and strike it and the blamed thing may trip and spill everybody out on their noses.

Q. Can that appliance be operated, as is claimed by one person? A. Not very well, sir.

Q. Do you know any boat-releasing device in use at the time of the loss of the *Bourgogne* which was capable of being operated by one person?

A. None that was reliable. Our firm would not use any except the block and fall.

Q. And that was the appliance on the *Bourgogne?*

A. Yes.

Q. Do you know whether other steamship building concerns use anything different?

A. All the ships the firm John Roach & Sons have built since 1871 have used nothing but the block and fall.

Q. By John Roach & Sons do you mean the Morgan Iron Works as well as the works at Chester?

A. I mean the Delaware River Iron Shipbuilding and Engine Company of Chester.

.Q And the Morgan Iron Works of New York?

A. The Morgan Iron Works of New York only build the engines.

Q. Do you know of any appliance superior to the block and fall that was in general use by other shipbuilding concerns?

A. I do not.

(Record, pp. 1087-1088, fols. 3004, *et seq.*)

Supervising Inspector Dumont, to whose testimony reference has already been made, was ex-

amined by the petitioner on the subject of boat-disengaging apparatus.

He testifies as to the records of his office commencing in the year 1873 down to 1898, (Record, p. 1101, fols. 3287, *et seq.*), by which it is shown that the Inspectors were unable to decide upon a suitable device for lowering boats.

It is claimed that a certain patented device of the Standard Automatic Releasing Co. should have been adopted and put in use on the *Bourgogne*.

As to the device of the Standard Company, the records show that there were tests of it on the 3rd of February, 1898, in the port of New York, on the Revenue Cutter *Dexter*, one of which nearly resulted in drowning two occupants of the boat having this Standard Co.'s apparatus.

As it was the boat was more than half-filled with water.

(Record, pp. 1104-1105, fols. 4397, *et seq.*)

General Dumont was then asked:

"Q. Do you know of any device that is capable of satisfying the requirements of the statute I have just mentioned?

A. I do not.

Q. Then if I understand you aright in your reference to the law being made practically effective by the local boards, you refer to the ordinary block and fall and the ordinary hook?

A. That was what I had in mind. I speak from personal experience."

(Record, p. 1115, fol. 3328.)

General Dumont also testified that there had been no device approved either by the Secretary of the Treasury or the Board of Inspectors.

(Record, p. 1101, 1102, fols. 3289-91.)

Under Section 4489 the approval of the Secretary of the Treasury is essential to its adoption. See Opinion of the Solicitor of the Treasury Record, pp. 1130-1136.

The claimants called James R. Raymond who testified that he was manager of the Standard Automatic Releasing Company, formed to exploit a boat-disengaging apparatus.

Previous to such employment Raymond had been a clerk in the Treasury Department in Washington, and had been in other occupations, but was not an engineer.

(Record, p. 1066, fol. 3183).

His testimony shows that this apparatus was not in use on Transatlantic Lines, and that it had not been adopted by the United States Navy, and that the us of it before the collision in this case had been extremly limited.

(Record, p. 1062, fol. 3171).

It is evident from his testimony that he knows very little about it, not having seen it in use under conditions which would enable any one to determine whether or not it was the "suitable" apparatus contemplated by the statute.

The claimants also called Ira Harris, who seems to be rather uncertain as to his connection with this Standard Company, as he says, "I have been temporarily or partially employed by" it (Record, p. 1068, fol. 3187). He never knew anything about the apparatus before the Spanish-American war, and was not in a position to know about it not

being previous to that time a manufacturer. He says he saw it in use since the end of the Spanish-American war.

(Record, p. 1071, fol. 3196).

His testimony shows that he never had an opportunity to observe the operation of this apparatus under all conditions, and, therefore, he was not competent to testify that it was the "suitable" apparatus prescribed by the statute.

The claimants' counsel practically charges the officers, whose duty it was to inspect the vessels at this port, with not having done their duty. There is no evidence in this case to sustain any such charge. The supervising inspector and two inspectors have sworn that the petitioner complied with the statutes, and, their testimony constitutes a *prima facie* case, and unless they are successfully contradicted by the testimony of other witnesses their testimony must be accepted; but no such contradictory testimony worthy of any consideration has been adduced.

It thus appears that *La Bourgogne* as regards her equipment in respect to lifeboats, &c., fully complied with the regulations of the officers appointed to determine the character of such equipment.

The argument urged that, because by a rule of measurement of the capacity of boats adopted by the supervisors the boats might not accommodate all the persons on board the *Bourgogne*, there was a violation of Section 4488, is unsound, because neither that section nor any other requires a steamer to be equipped with boat capacity to take on board every person on the ship, nor greater than the boat capacity by tonnage measurement.

Section 4488 in connection with 4489 and 4405, clearly devolved upon the supervising inspectors general discretion in regard to boat capacity on foreign ocean steamers. They have not seen fit to make a regulation that there shall be absolute boat capacity sufficient for the accommodation of every living person on board, but have deemed it sufficient to gauge the boat capacity by the tonnage of the vessel. Nor has Congress seen fit to make such a hard and fast rule, nor has any other maritime nation made this positive rule, so far as appears. The French rule is that the boat capacity shall be "according to custom" (Record, p. 2237, fol. 6691).

But if it were true that there was a technical violation of Section 4488 in either of the particulars claimed, such failure to comply with the statute would not forfeit the petitioner's right to its limitation of liability.

The claimants rely on Section 4493 to sustain their contention that such could be the effect of a failure to comply with the terms of Section 4488:

> "Sec. 4493. Whenever damage is sustained by any passenger or his baggage from explosion fire, collision, or other cause, the master and the owner of such vessel, or either of them, and the vessel shall be liable to each and every person so injured, to the full amount of damage if it happens through any neglect or failure to comply with the provisions of this Title, or through known defects or imperfections of the steaming apparatus or of the hull; and any person sustaining loss or injury through the carelessness, negligence, or willful misconduct

> of any master, mate, engineer, or pilot, or his neglect or refusal to obey the laws governing the navigation of such steamers, may sue such master, mate, engineer, or pilot, and recover damages for any such injury caused by any such master, mate, engineer, or pilot."
>
> R. S. Section, 4493.

This section does not apply to foreign steamships. Section 4493 is a part of Title 52 of the *Revised Statutes.* By Section 4400 (as it originally stood), vessels of other countries were expressly excepted from steam vessels subject to the provisions of this Title. See *R. S.,* Section 4400. By the *Act of August 7th, 1882,* 22 Stat., p. 346, Section 4400 was amended by providing that foreign steam vessels carrying passengers from any port in the United States shall be subject to the provisions of certain sections of Title 52, including 4488 and 4489, but not including 4493, and the Act provided further that such vessels should be liable to visitation and inspection by the proper officer in any port of the United States respecting any of the provisions of the sections aforesaid.

The claimants cite in support of their contention that the petitioner is not entitled to the limitation of liability by reason of a defective equipment, the cases of the *Rio de Janeiro,* 130 Fed. R., 76; *Providence & N. Y. S. S. Co. vs. Hill Manufg. Co.,* 109 U. S., 578, at p. 602; *Sherlock vs. Alling,* 93 U. S., 106; *Butler vs. Boston &c., S. S. Co.,* 130 U. S., 527, at p. 553.

The case of the *Rio de Janeiro, In re Pacific Mail S. S. Co.,* 130 Fed. Rep., 76; is a decision of the Circuit Court of Appeals for the Ninth Circuit. It was the case of a domestic steamer, and it was held

that by force of Section 4493 the owner was not entitled to a limitation of its liability in consequence of a violation of Section 4463 in Title 52 which requires every steam vessel to have a full complement of licensed officers and full crew sufficient at all times to manage the vessel; that she was not properly manned, her crew being Chinese and only two of them understanding the language spoken by the officers, and that the insufficiency of the crew was the immediate cause of the damage to persons and baggage.

The case of *Sherlock vs. Alling,* 93 U. S. 106, was an action against the owners of two boats of a domestic line of steamers running on the Ohio River. The action was for damages resulting from the death of a passenger in a collision between the two ships under an Indiana statute authorizing such a suit. The action was commenced in an Indiana Court. This also was a case under Section 4493, the same having been previously enacted in 1852, *10 Stat., p. 72, S. 30,* and in 1871, *16 Stat., p. 445, S. 11,* and embodied in the *Revised Statutes* as Section 4493 with unimportant changes. The case was not one of limited liability, for there was no proceeding for limitation of liability. The defence was that the damage was caused by the negligence of the pilot. There was some ground to contend that this statute as it existed in 1852, made the pilot or the engineer alone responsible, and the Court having decided that the statute did not have this effect so far as that case was concerned, it left the statute declaring that the master and owner should be liable for full damages in full force. The case has no bearing on the present case. There seems to be nothing in the opinion of the

Court in *Providence & N. Y. S. S. Co. vs. Hill Mfg. Co.*, 109 U. S., 578, 602, which bears on this question. It was the case of a domestic steamship company and the result of the litigation was that the limitation was sustained.

In *Butler vs. Boston, &c., S. S. Co.*, 130 U. S., 527, which was the case of a domestic steamship, the Court said:

> "If, in those proceedings, it should appear "that the disaster did happen with his privity "or knowledge, or perhaps if it should appear "that the requirements of the steamboat in- "spection law were not complied with by him, "he would not obtain a decree for limited lia- "bility; that is all. We say 'perhaps,' for it has "never yet been decided, at least by this Court, "that the owner cannot claim the benefit of "limited liability when a disaster happens to "a coastwise steamer without his fault, privity "or knowledge, even though some of the re- "quirements of the steamboat inspection law "may not have been complied with. The Act of Congress, passed June 26th, 1884, entitled "'*An Act to Remove Certain Burdens on the* "'*American Merchant Marine*,' etc., 23 Stat., "53, Ch. 121, has a section (Section 18) which "seems to have been intended as explanatory "of the intent of Congress in this class of legis- "lation. It declares that the individual lia- "bility of a shipowner shall be limited "to the proportion of any or all debts "and liabilities that his individual share "of the vessel bears to the whole; and "the aggregate liabilities of all the owners "of a vessel on account of the same shall not "exceed the value of such vessel and freight "pending. The language is somewhat vague, "it is true; but it is possible that it was in- "tended to remove all doubts of the application "of the limited liability law to all cases of loss

"and injury caused without the privity or "knowledge of the owner. But it is unneces- "sary to decide this point in the present case. "The pendency of the proceedings in the lim- "ited liability cause was a sufficient answer to "the libel of the appellants."

Butler vs. Boston S. S. Co., 130 U. S., 527.

Thus all the cases referred to in which there has been any intimation that the limitation of liability is lost by reason of the provisions of Section 4493, are cases of domestic vessels which are subject to that section, and have no bearing on the case of a foreign vessel which is excepted from the operation of that section; and the result of the authorities seems to be that even as to domestic vessels the question whether a defect in equipment by virtue of Section 4493 will avoid the limitation of liability in respect to a domestic vessel is still open in this Court.

The case of the *Pennsylvania*, 19 Wall., 125, also is referred to, where it was held that on the question of the liability of a vessel, or of the owner, for damage, if it appears that she has violated some rule of navigation, it must be held that she is in fault for the collision, unless she can prove that the disaster did not result from that particular fault. But this is a presumption arising in a case where the question simply is of the liability of the vessel or her owner for the collision or other disaster. It has no application to the question of limitation of liability, which depends upon whether the disaster happened without the privity or knowledge of the owner.

The *Bourgogne* was fully fitted, manned and equipped for the service in which she was engaged

and complied with the strict requirements of the French law in every particular.

The petitioner called two witnesses Paul Lannes, (Record, p. 448, fols. 1343, *et seq.*) a scientific engineer, who was in the employ of the petitioner in 1898, but not in the employ of the petitioner at the time he testified, October, 1901; and Paul Simon, (Record, p. 469, fols. 1407, *et seq.*) marine superintendent of the petitioner at Havre. By these witnesses it was proved that the *Bourgogne* was in every respect a first-class steamer, in the very best condition in every particular; that she had been recently overhauled and put in complete order. She had eleven bulkheads running transversely. They were perfect when she sailed from Havre on her last voyage. In 1897, or the beginning of 1898, she had been thoroughly overhauled and had new boilers. The work was approved by an official commission and accepted in March, 1898 (Record, p. 468, Exhibit 9, fol. 1404).

Mr. Lannes testifies that the appliance for lowering the boats was one of the best known and widely used systems, and that he did not know of any better generally accepted and in general use than those with which the *Bourgogne* was provided (pp. 454-455, fols. 1362-1365). It was his duty to look after the vessels of the Line whose port was at Havre, and to keep them up in every particular and to see that they were in perfect order every time they sailed (pp. 448-449 ,fols. 1344-1347).

The witness Simon had been a commander of vessels and navigator for 25 years (p. 478, fol. 1432). He testified that he had charge of the crew of the vessel and the outfit in general—in fact whatever concerned the ship in general, and that it

was his business to see whether the officers and seament were suitable for their employment (p. 470, fols. 1408-1410).

He testified that Captain Deloncle, who was Commander of the *Bourgogne* at the time she was lost, had been a lieutenant in the French Navy, and had been in the service of the petitioner about two years; that he was one of the best officers of the navy, and like all the captains who came out of the French Navy, his qualification as a navigator was complete. There had never been any question raised as to the proper character and competency of Commander Deloncle (p. 470-471, fols. 1410-1413); that all the officers and crew were competent and selected with care (p. 471, fol. 1413); that she had on board everything necessary to navigation; she had the necessary number of lifeboats; 12 lifeboats and four life rafts, and their condition was good (p. 472, fols. 1414-1416); that she had been inspected and passed by all the authorities so far as survey and their general condition was concerned (p. 472, fols. 1415, 1416). That the government furnishes a list of specifications of what is required in the ship, and that there are inspectors who examine the ship as to all such matters; this included the item of life saving belts (p. 479, fol. 1435).

The *Law of the 24th of June, 1883,* promulgated by the French Government, provides for the manner in which the ships engaged in the Line from Havre to New York shall be equipped.

This law will be found, set forth at length, in the Record, page 2223, folio 6648, *et seq.*

With respect to the lifeboats, rafts, lifebelts, etc., the specifications under said law provide as follows:

> "It shall also be provided with buoys and lifeboats *according to custom* and likewise with a number of life-saving belts equal at least to the maximum number of passengers and of the crew. The life saving belts shall conform to the model which shall be approved by the commission of examination provided in Article 21.
>
> *Cahier des Charges,* Record, 2237, fol. 6691.

The *Bureau Veritas* inspected the *Bourgogne* after repairs were completed and gave certificates (Exhibits Nos. 10 and 11; p. 453, 454, 468, fols. 1402, 1358).

As respects these two alleged defects in equipment, if either of them is made out, it would be most unreasonable to hold the owners of this vessel in Paris to have known more on the subject of what is required by the regulations of the steamboat inspectors in New York, or by the government, than was apparently known to the persons who are put at the head of this bureau to administer it with respect to foreign vessels, and it should be held in respect to the owners of a foreign vessel living abroad that the existence of such defects, however ingeniously they may be worked out by counsel on the trial, and, in fact, unknown to the officers appointed to visit and inspect such vessels, are not within the knowledge or privity of the owners. Nor was either of these defects in any way or sense the cause of the collision, or, so far as appears, the cause of injury or damage to any of the claimants.

The great loss of life was mainly owing to the facts hereinbefore stated (pp. 2, 3, 4, 5, *supra*).

The collision occurred, about five o'clock in the morning, while the passengers were asleep in their beds; three of the life-boats on the starboard side, numbers 1, 3 and 5, were demolished or disabled by the impact of the *Cromartyshire* (Record, pp. 650, 1001, 694, 695, 420, 424, 987, fols. 1949, 2986, 2073, 2075, 1258, 1271, 2471, 2944); lifeboat number 7, also on the starboard side, while loaded with passengers, was smashed and many of the passengers killed by the falling of one of the *La Bourgogne's* funnels (Record, pp. 750, 678, 679, 680, 691, 762, 765, 865, 871, 784, 980, fols. 2234, 2024, 2027, 2030, 2063, 2269, 2578, 2597, 2337, 2925); one life raft was injured in falling on a lifeboat (Record, p. 732, fol. 2180); and because of the great list of *La Bourgogne* to starboard, it was imposisble to lower the boats on the port side, except two, one of which was launched immediately atfer the collision and the other in launching was capsized (pp. 837, 983, 793, 812, 742, 987, fols. 2494, 2934, 2362, 2419, 2210, 2944).

This list has been described by some of the witnesses, as so excessive that it was almost impossible to stand (Record, pp. 741, 523, 519, fols. 2206, 1567, 1556).

In addition, the passengers themselves interfered with the work of lowering boats (pp. 491, 509, 668, 692, 836, 983, 793, 812, 742, 987, fols. 1525, 1471, 1995, 2062, 2492, 2494, 2934, 2362, 2419, 2210, 2944).

It is testified that *La Bourgogne* sank in about 35 minutes after the collision (Record, pp. 518, 658, 692, 703, 753, 740, 510, fols. 1553, 1968, 2065, 2097, 2240, 2216, 1528).

(5)

Of the application of the statute to such alleged defects of equipment.

And in reference to this third specification of fault, the non-observance of a law of the United States in regard to the equipment of the ship, if it were proved that there was any such defect, it clearly would not be a case of knowledge or privity of the owner within the fair meaning and reason of the exception to the rule of limitation of liability under Section 4283.

The rule of interpretation announced in the case of *Providence & N. Y. S. S. Co. v. Hill Manfg. Co.*, 109 U. S., 578, at p. 588, by this Court, namely, that it should be administered in the spirit of fairness with a view of giving to the shipowners the full benefit of the immunities intended to be secured by it, and not with a tight and grudging hand, construing every clause most unfavorably against the shipowner and allowing as little as possible to operate in his favor, applies with equal force to the exception as to the rule itself.

The fair and reasonable interpretation of the exception is that the owner should be without fault or blame in respect to participation in the cause of the disaster.

In *Norwich Company vs. Wright,* 13 Wallace, 116, Mr. Justice Bradley, referring to Judge Ware's opinion in the case of *The Rebecca,* 1 Ware, 187; 20 Fed. Cases, p. 373, says:

> "He shows that it (this rule) originated "in the maritime law of modern Europe; that "whilst the civil as well as the common law "made the owner responsible to the whole ex- "tent of damage caused by the wrongful act "or negligence of the master or crew, the mari- "time law only made them liable, (if person- "ally free from blame), to the amount of their "interest in the ship. So that if they surrend- "ered the ship they were discharged."
>
> Norwich Co. v. Wright, 13 Wallace, 104, at p. 116.

This was the principle intended to be adopted by the Act of 1851.

The rule is, limitation of liability on surrender of the ship.

The exception is in the nature of a forfeiture of the common privilege for cause, expressed in our law by the words "without privity or knowledge" in respect to the cause of the disaster.

The reason for the exception is the existence of some cause for blaming or punishing the owner for a wrongful act in respect to the disaster.

A mere technical fault which involves no moral participation in the cause of the disaster is not within the reason of the exception.

If the owner of a foreign ship has complied with all the requirements of the officers appointed by our laws and representing our Government to see that the ship is properly equipped, and to make rules and regulations therefor, and if he has submitted himself and his ship to their in-

spection and visitation, he is not guilty of any wrongful participation in respect to the cause of the disaster, even if the loss can be traced in part to a non-observance of some law which the appointed servants of the State either did not themselves understand, or did not enforce as against this ship, or any other foreign ship. The spirit of the law does not require a forfeiture of this common right of all shipowners because of a technical, formal, or unintended participation in the cause of the loss.

This was the spirit of the maritime law which we have adopted in this enactment.

The ordinance of *Louis XIV* was in the following form (Title Fourth):

> "I. All our subjects of any quality or condition whatsoever, may cause ships to be "built or bought, fit them out for themselves, "freight them to others, and drive a trade at "sea by themselves, or by persons interposed; "by which gentlemen shall not be reputed to "do any act derogatory to their quality, provided they sell nothing by retail.
>
> "II. The owners of ships shall be answerable for the deeds of the master; but shall "be discharged, abandoning their ship and "freight.
>
> "III. However, the owners of *armed* ships "shall not be answerable for their crimes and "piracies committed at sea by the crews of "their ships any further than for the sums for "which they may have given security, except "it appear that they are partakers or accomplices in the crimes."
>
> *Marine Ordinances of Louis XIV*, 30 Fed. Cas., 1203, at p. 1206, 2 Pet. Adm., Appendix III.

This clearly shows that the spirit of the maritime law did not contemplate the forfeiture by the shipowner of his limitation of liability which was the rule on the surrender of the ship, unless he were a partaker or accomplice in the wrongful act.

Although the second article of this Ordinance contains no express exception it cannot be doubted that the justice of any nation would hold that fraud, or knowingly being a partaker or an accomplice in the wrongful act which caused the loss of the ship, must forfeit the privilege given to the owner, and that is the meaning and the reason and the spirit of this exception in our statute; and it cannot be made to apply to the failure to comply with some municipal law of the country, which the appointed executive officers who visit and inspect the foreign ship either do not themselves understand, or of which they do not require performance.

If this were the case of an American ship meeting with a disaster going out of Havre for New York, and the owner brought the remnants of the ship and pending freight before a French court, claiming the benefit of the maritime law, which is the same as ours, and it appeared that the ship was visited and inspected by the French officers appointed by the Government for that purpose, and complied as to its equipment in all respects with their demands, we would confidently expect that the French court would not deprive the American owner of his limitation of liability because of some municipal statute of France requiring some additional equipment in the way of boats or rafts which the visitors and inspectors had not required, or some hook disengag-

ing apparatus on which some French subject had taken out a patent, and which was not in fact required in case of foreign ships, even if such further equipment was remotely connected as a cause with some part of the loss.

Ought we not to administer this law, which is common to France and our own country, and which we have received from France, in a case where the French ship owner is the party claiming its benefits, in such a spirit of fairness and justice as we would deem our own ship-owners entitled to receive from a French Court? To-day it is the case of a French ship-owner in our courts. To-morrow it may be the case of an American ship-owner in a French court appealing to the same law.

Our answer, therefore, to these three foregoing grounds upon which it is claimed that the petitioner has forfeited this limitation are as follows:

To the first that the owner is under no obligation to instruct its captains in their duty as navigators, but in any view of its duty it has given them all reasonable instructions.

To the second that the custom to run its ships at an excessive rate of speed in fog, or the connivance or participation of the managers of the company by such custom is not proved.

To the third that the alleged defects of equipment are not established in fact, and, if established, do not make out a cause for forfeiture of the right of limitation of liability within the meaning and reason of the statute.

(6)

It seems unnecessary to refer to the argument made in the Courts below that the petitioner should be denied this limitation of liability because it did not pay actually over to the trustee the freight from New York to Havre, or either of the other sums claimed as pending freight.

The transfer to the trustee is in strict conformity to the *Statute R. S.* 4285, and vests in the trustee the title to any and all sums due; but it would be unreasonable to hold that the petitioner should pay over as freight money as to which it is one of the objects of the proceeding to determine whether or not it *is* freight.

The Scotland, 105 U. S., 24, at p. 34.

That the District Court held that each and all were not freight would seem enough to establish the petitioner's good faith, and refute the charge of a wilful retention or holding back part of the price of its limitation of liability; and while the Circuit Court of Appeals has decided that one of these items is freight, the matter is still in litigation, and the petitioner is and has been at all times subject to the order of the Court, if it shall finally be decided as to either or all of them that they should be paid over.

The claimant made a motion in the Circuit Court of Appeals to compel the petitioner to pay into Court the amount of the freight for the voyage from New York to Havre, which that Court had decided was freight, but this motion was denied.

(Record, fol. 7125, *et seq.*)

If the Court should direct that, pending decision, either of these sums be paid into the registry of the Court to await the determination of the question, such action would perhaps be within its power.

But no suggestion is made that the fund is in danger from these moneys not being paid in.

(7)

Of the effect of the diversity between the law of this country and the law of France and other foreign countries as to what would constitute moderate speed in a fog, and in the rule or test by which such moderate speed is measured.

This diversity as between the French law and our own appears in the Record.

By the judgment of the Court of Appeals in Paris in the case of *Resal* against this petitioner to determine its alleged liability for loss of life by this very collision, it was held that a reduction from her full speed of 17½ knots to twelve knots an hour for the *Bourgogne* at the place where the collision occurred and under the conditions then existing was moderate speed within the international rule and that moderate speed is that under which the ship is under the most complete control. (Record, p. 1225). See the same rule declared in case of the *Touraine* (Record, p. 1168). Our courts on the contrary hold that ten knots an hour for such a steamer under the same circumstances is not a moderate speed, our test being such a speed and no greater than will enable the ship in case another vessel, herself going at moderate speed, comes in sight to come to a full stop.

In the case of the *Rio de Janiero* and the *Champagne* on the 9th of August, 1887, which is reported in *III Revue International de Droit Maritime*, p. 300, the Court, the Tribunal of Commerce of Havre, says that speed of 14½ knots in a fog is not excessive in the case of a vessel like the *Champagne*, which requires such a speed for its greatest efficiency because, in a heavy fog the best chance to avoid a collision is a rapid manœuvre to port or starboard. This decision was affirmed by the Appellate Court of Rouen on the 28th of December, 1887 (*III Rev. Intern. de Droit Mar.*, p. 543). The Court found and justified a speed of 14 knots at the time the whistle of the other vessel, the *Rio de Janierio*, was heard. The rule established by this case was approved and followed by the highest Court in Germany, as stated below.

~~The *Chattahoochee*, 173, U. S., pp. 540, 548.~~

Such diversity, of course, must be expected in the application of a rule of maritime law agreed upon, as this rule is, by maritime nations, where the rule itself does not define with exactness the number of knots per hour constituting moderate speed or the rule by which it is to be determined.

In the case of the *Lottawanna*, 21 Wall., 558, this Court recognized the necessity for the existence of such diversity in the maritime law, saying:

> "Whilst it is true that the great mass of "maritime law is the same in all commercial "countries, yet, in each country, peculiarities "exist either as to some of the rules, or in the

"mode of enforcing them. Especially is this "the case on the outside boundaries of the law, "where it comes in contact with, or shades off "into the local or municipal law of the partic- "ular country, and affects only its own mer- "chants or people in their relations to each "other. Whereas, in matters affecting the "stranger or foreigner, the *commonly* received "law of the whole commercial world is more "assiduously observed, as in justice it should "be."

The *Lottawanna*, 21 Wall, 558, at p. 572.

France is not alone in this diversity from us. While there is some difference in the foreign decisions, the reported cases show that Germany agrees with France and applies the test of complete or most efficient control of the vessel in order to enable it to execute any manoeuvre. The other authorities we have found are as follows:

The Court of Appeals at Brussels, by a decision of the 10th of February, 1877, (*Pasi crisie* Belg. 77, 2, 142) decided that in every case a vessel has a right to keep sufficient speed to be under complete control and to be able to execute the necessary manoeuvres.

In a decision of the same Court of the 28th of November, 1891, (*XVII Revue International de Droit Maritime*, 489), the Court holds that the proper criterion is that the vessel must be able to come to a complete stop within the visible distance.

The Court of Antwerp in a decision of the 30th of December, 1897, (*Revue International de Droit Maritime*, XVIII, 681), decides that the question whether the speed has been moderate or not depends on all the circumstances, and it holds that in the Channel, during a severe fog, where there are

many sailing vessels tacking, a speed of 5½ knots was excessive.

In Germany, Dr. Prien, the author of one of the leading text books on the subject, and President of one of the Maritime Courts, claims that the rule is that the speed must be such that the vessel can be brought to a complete stop within *half* the visible distance (*Prien Zusammenestoos von Schiffen,* p. 291), citing the decision in the matter of *Cymbria* decided by the Court of which he was president.

In the case of *Feill vs. Steam Navigation Company, Hanseatic Law Journal,* 1881, No. 2, the rule has been stated to be that a ship has a right to go at such speed as is necessary for its full control, and the Court adds that the words "moderate speed" are not so precise themselves that if the speed slightly exceeds what might be considered necessary for such control, such excess can be considered as negligence on the part of the master.

In a decision reported in the *Hanseatic Law Journal,* 1887, No. 124, (See also No. 92), the decision of the *Rio de Janierio* and *The Champagne* above cited is expressly approved.

The same doctrine is laid down by the highest Imperial Court on review of the decision last above cited.

(*Entschedidungen der Reichsgericchte in Civil Sachen* XXIII 14). In that case reviewing the prior decisions, the Court disapproves of the rule laid down in the case before cited by Prien and states that as long as that rule is not embodied in an International rule, its non-observance cannot be considered as negligence as a matter of law.

Reviewing its prior decisions it comes to the conclusion that the rule is that a vessel may go with such speed as is necessary for full control. It

overrules one of its own decisions in which it intimated that as a matter of law, when there was no visible distance, the ship had to go to anchor, and holds that while under Rule 24, a ship may have to go to anchor, or drift, in a dense fog, it cannot be held that it is bound to do so as a matter of law.

This decision has since been followed by the Courts.

(See *Billins vs. Wencken, Hanseatic Law Journal*, 1896, No. 87).

We have found no decisions of the Courts of Spain, Italy, Holland or the Scandinavian countries, but in the absence of such decisions the test applied by the French and German Courts would seem to represent the general opinion of Continental Europe.

The rule adopted in England seems more analogous to ours than to that of the Continental countries. (See cases in the *Chattachoochee, ut supra.* The Chattahoochee, 173 U.S. 540, 548

The adoption of the international rules for the prevention of collisions by all the principal maritime nations makes those rules a part of the general maritime law, for that is maritime law which is accepted as such by the consensus of the maritime nations. Yet while the general principle of moderate speed in a fog is a rule of the maritime law, the particular rate of speed under given circumstances or the test by which it is to be determined which one nation may have adopted as the proper measure of moderate speed is not a part of the maritime law, if it differs from that of other maritime nations, or is not in accordance with the general view of maritime nations on that subject.

France and Germany have one rule or measure of moderate speed; the United States has another. Russia, Italy, Holland and Sweden and Norway may each have their own. It is a matter on which the maritime nations have not come to a general opinion or agreement so as to establish in that respect a rule of the maritime law.

What, then, is the effect of this diversity on this particular point, upon the right of the petitioner as the owner of a French ship to its limitation of liability under the maritime law on surrender of ship and freight, which we, following the example of Great Britain, adopted from France and the other maritime states of Europe, where it had been in force for centuries, as expressed in the *Marine Ordnance of Louis XIV.*, and other ancient foreign codes, and which was embodied in our Statute of 1851, whereby we also declared it to be part of the maritime law of the world.

The case has been presented in this brief thus far on the proposition which has been sustained by both the courts below that there is no proof in the case of any usage of the ships of this line to exceed the rate of speed in a fog which is recognized as moderate by our courts, or any connivance or participation by the managing officers of the petitioner in any such custom.

But we go further and confidently claim that if it were shown, as we insist it is not, that the captains of this line, to the knowledge of the petitioner, navigated their ships in fog at a speed in excess of that recognized by this country as moderate, but within the limit of speed recognized by the French law as moderate, the petitioner's right to its limitation of liability would not be thereby impaired or forfeited.

Referring to the foregoing argument as to the application of this statute to foreign owners in connection with the charge of a defective equipment, as hereinbefore stated (pp. 119-123), the same principle would apply in this matter of speed. Each nation undoubtedly may prescribe a rule for its own ships on the high seas in respect to what constitutes moderate speed in a fog, but no nation can dictate to another nation, either judicially or otherwise, what such other nation shall prescribe or enforce as the measure of moderation under the same circumstances for its ships, and in the absence of an agreement among the maritime nations there is no uniform law on this subject.

No nation can arrogate to itself the power to define for all other nations what is moderate or excessive speed—that is, the precise number of knots per hour which constitute such moderate speed under given circumstances,—or, the rule by which such moderate speed shall be tested.

If the argument heretofore made in reference to a supposed defect in equipment is correct and is the true exposition of the proper application of this statute, then the question is, whether a French shipowner is chargeable with such blame or moral participation in the cause of the loss or damage by conforming to the French law in this particular upon the high seas, as should as matter of law work a forfeiture of his right to a limitation of liability, which is the general rule of the maritime law, of which our statute is the mere expression

In the case supposed, of the owner's consenting to the speed of ten knots an hour or even of twelve knots in a dense fog, he has not violated any principle of the maritime law, and he has kept within the limits of the French law. At

the place of collision there were only two laws to which the ship could be subject in this respect—the general maritime law, or the law of France,—but as to the particular speed which the word "moderate" imports the maritime law is silent. What fault or blame, therefore, to use the expression of Judge Ware, in the "*Rebecca*," 1 Ware, 187, is the petitioner guilty of if it had kept within the limits of the law of France on this subject, which was the only law applicable at the time and place of the collision, in the absence of an established rule of maritime law? He has violated no law that was obligatory upon him. He has conformed to the only law that he was subject to. He is free from any privity or knowledge in respect to any wrong doing which was the cause of the injury complained of.

Above all there is no guilty knowledge and no participation or connivance in a known wrong. If it is assumed that he knew that his ships were run at a speed of 10 or 12 knots, he must be assumed also to have believed that this was not wrong but right—not involving danger but tending toward safety. In any view therefore he is an innocent owner who is by the maritime law entitled to limitation of liability and not within the condemnation of the exception. There is neither privity or knowledge of any wrongful act.

And the question arises and is to be determined not between an American ship and a French ship in which case the American ship owner might claim that the law of his country which was in force on an American ship on the high seas, was as much entitled to control the decision as the law of France to which the French ship was subject or between an English and a French ship in which case an English Court might perhaps fully apply

the English law—but between a French ship and the passengers and shippers of merchandise upon a French ship.

A person who embarks himself or his goods on a French ship certainly casts in his lot for certain purposes with the ship on which he embarks. For instance, in all matters relating to the power of the master during the voyage he voluntarily subjects himself to the French law.

These claimants for loss of life whose claims constitute the chief part of what is demanded of this ship owner in this case, rely on the law of France as the ground, and the only ground, on which their demands are based, on the theory that a ship on the high seas is in legal effect a part of the country to which it belongs. But assuming that their claim is well founded as respects their cause of action, how can they claim the benefits of the law of France as the only law in force at the place of the alleged wrongful act, and repudiate all its burdens? If they claim the benefit of the French law they must take that law as a whole; they cannot select parts of it which help their cause and reject or refuse to be bound by those parts which make against their cause.

If the law of France gives them a cause of action generally for damage done by the fault of the ship on the high seas as is claimed, it also clearly denies them a remedy for that which is not legal damage or fault of the ship by the law of France. They appeal to the law of France against the ship and its owner. But the same law of France justifies the ship and its owner in that which was done, and is complained of.

As between these parties therefore there is no other law to apply to the case—not the maritime law for it is silent on this subject in hand—not the law of this country for it has no extra-territorial force.

It may be suggested that in our own courts we must apply our own law. If by our own law in this connection is meant our rule as to what constitutes moderate speed as distinguished from that of other maritime nations, this is certainly a very narrow view to take of this rule of limitation of liability which obtains all over the world among all maritime nations, and which by our statutes we have adopted, and such narrow view of what is right and just would lead to this result, that the ship owners of all foreign countries whose courts in the interpretation of the words "moderate speed" permit or allow a greater speed in a fog than we have arbitrarily adopted as moderate, ~~must~~ may in our courts, if they are so unfortunate as to have their causes brought within our jurisdiction, fail to receive the benefit of the general maritime law on this subject which we profess to have adopted. The result would be also that the same shipowner would receive one measure of justice in one country and another measure of justice in another, which would be intolerable and destructive of that reciprocity and comity which should obtain in the administration of justice between different nations, especially in a matter of such enormous interest as the application of a principle of the maritime law of such importance to the commercial world and which ceases to be of any practical value unless its application is universal. This result is neither just nor right.

We certainly would resent such a result if ap-

plied to our shipowners in a foreign country if the conditions were reversed and that country had adopted a measure of moderate speed less than our own, by however small a margin.

We are not unmindful of what this Court has said in the case of the *Scotland*, 105 U. S., 24, at p. 31, that while it must be admitted that no nation has a right to make for another nation "a law of the high seas," yet "each nation may declare what it will accept and by the Courts enforce as the law of the sea when parties choose to resort to its forum for redress," and that "no person subject to its jurisdiction or seeking justice in its Courts, can complain of the determination of their rights by that law unless they can propound some other law by which they ought to be judged," and "that this they cannot do unless both parties belong to the same foreign nation, etc."

The Scotland, 105 U. S., 24, at pp. 31, 32.

In this case the petitioner is able to propound another law by which it ought to be judged—the law of France to which the other party to the controversy appeals.

For the purposes of this case and in a legal sense both parties, the shipper and the ship, are of the same nation within the meaning of the exception here stated by this Court.

Sir Lionel Jenkins, in a charge to the jury, at the old Bailey, in 1674, says:

> "The Power and Jurisdiction which His Majesty hath at sea, and those remoter parts of the world, is but in concurrence with all other sovereign Princes who have ships and subjects at sea."
>
> 1 Sir Lionel Jenkins Works, p. 91.

And Wheaton says:

> "Both the public and private vessels of a nation on the high seas, and out of the territorial limits of any other state are subject to the jurisdiction of the state to which they belong."

In Reg. v. Anderson, L. R., 1 Cr. Cas. Rsvd., 161, it was held that an English Court had jurisdiction to punish a murder committed on an English vessel by an American citizen who was a member of the crew, at a place or on a river within the Empire of France and within the ebb and flow of the tide.

There was question of the jurisdiction of France, but the status of persons on board a British ship on the high seas was considered by the judges, and Bovill, C. J., says:

> "There is no doubt that the place where the offence was committed was in France, and that the prisoner was therefore subject to the laws in France, which that nation might enforce if it saw fit; but at the same time he was also within a British merchant vessel on board that vessel as part of the crew, and as such he must be taken to be under the protection of the British law and also amenable to its provisions.
>
> It is also said that the prisoner was an American citizen, but he had embarked on his own consent on board of a British ship, and was at the time a portion of its crew. There are many observations to be found in various writers to show that in some instances, though subject to American law, as a citizen of America, and to the law of France, as being found within French territory, yet that he must also be considered as being within British jurisdiction as forming a part of the crew of a British vessel upon the principle, that the jurisdiction of a country is preserved on its vessels, though they may be in ports belonging to another nation" (p. 165).

And Channell, B., says:

> "The ground of decision in my opinion is that the ship in question was within the admiralty jurisdiction at the time the offence was committed and that that of itself is sufficient to support the conviction."

Byles, J., says:

> "I retain the opinion I expressed at the trial. I told the jury that the ship, being a British ship, was, under the circumstances, a floating island where the British law prevails, that the prisoner though an alien enjoys the protection of the British law and was as much subject to its sanctions as if he had been in the Isle of Wight."

And Blackburn, J., says:

> "There are a vast number of cases which decide that when a ship is sailing on the high seas and bearing the flag of a particular nation, the ship forms a part of that nation's country and all persons on board of her may be considered within the jurisdiction of that nation whose flag is flying on the ship, in the same manner as if they were within the territory of that country."

The necessary application of the principle thus declared to the question what law governs in relation to the speed at which a French ship may be run on the high seas is obvious. Some law must prevail. There may be on board persons of different nationalities—Americans, Englishmen, Frenchmen, Italians. It is impossible to suppose that the Englishman can say that the ship shall be run according to English law, or the American, according to American law, or the Italian, according to Italian law, merely because these passengers are of these several nationalities. Any other law than

the law of the flag to govern the conduct of the master both in respect to discipline and the navigation of the ship would lead to endless confusion.

This great principle of limitation of liability on surrender of ship and freight is of little value unless it is universal throughout the commercial world and unless the rights and immunities acquired under it by the shipowners of one nation are fairly recognized and enforced in all other great maritime States.

Those rights and immunities are just as much entitled to be respected and recognized by the Courts of other nations as rights of possession and ownership of property.

To give this great law this general application and force, the exception which attaches to it must also be universal; that is, must be construed as an exception which all maritime nations recognize as just and right as a common ground for the deserved forfeiture of a common right.

If it is subject to being denied or annulled in the courts of any nation by reason of the peculiar and local rules adopted by such nation for the government of its own ships, and which have and can have no intrinsic obligation on the ships of other nations on the high seas, then it ceases to be a universal principle of the maritime law, and fails of its great and avowed purpose, and will be, to quote the language of Mr. Justice Bradley, in Providence & N. Y. S. S. Co. vs. Hill Mfg. Co., 109 U. S., 578, at p. 589, (*ut supra*), "hardly worth the trouble of its enactment."

To allow it to be enforced or denied according to such local rule is by force of local law of limited operation to annul the law of nations.

We do not at this time press this argument upon

the Court for the purpose of calling in question the decision of the two courts below that the *Bourgogne* was not entitled to be discharged from all liability for the damage caused by the collision. We are not at liberty to ask for a reversal of that decision unless our counter-petition for *certiorari* is granted, but we are at liberty to contest whether upon the facts found the petitioner is entitled to its limitation of liability.

FOURTH POINT.

The finding of the District Judge that the petitioner was entitled to a limitation of liability concurred in by the Circuit Court of Appeals, will not under the rulings of this Court be disturbed, inasmuch as the same involves essentially a question of fact.

The District Court decided, as a question of *fact*, by two Judges (Townsend and Thomas) that the loss of the *Bourgogne* was *without the privity or knowledge of the petitioner*, and that it should have a decree limiting its liability to its interest in the steamship and her pending freight, and this finding of fact was concurred in by the Circuit Court of Appeals.

These learned Judges (unanimously) decided that the disaster in question was *without the privity or knowledge of the petitioner*, and, therefore, that the petitioner should have a decree limiting its liability to its interest in the steamship, and her pending freight, as prayed in the original petition in the District Court.

It is not necessary to go into an extensive examination of this very plain rule so often laid down by this Court.

Compania La Flecha vs. Braver, 168 U. S., p. 104.

Stuart v. Hayden, 169 U. S., p. 1.

Baker vs. Cummings, 169 U. S., p. 189.
The Carib Prince, 170 U. S., p. 655.
Morewood v. Enequist, 23 How., 491.
The Conquerer, 166 U. S., 110, 136.
Illinois v. Illinois Central R. R. Co., 184 U. S., 77.
Towson vs. Moore, 173 U. S., pp. 17, 24.

Under the Act of March 3, 1875 (18 Stat. L. 315), it was provided that:

> "The review of the judgments * * * by "the Supreme Court upon appeal, should be "limited to a determination of the questions of "law arising upon the record."
>
> Act March 3, 1875, 18 State. L. 315, Sec. 6.

Since the Act of 1891, 26 Stat., p. 828, establishing Circuit Courts of Appeals, cases removed to this Court on *certiorari* are here for review and determination, with the same power and authority in the case as if they had been brought here by appeal.

In *Campania La Flecha vs. Braver, supra*, it was held:

> "No ground is shown for reversing or modi- "fying the conclusions of fact reached by both "courts below. Their concurrent decisions up- "on a question of fact are to be followed unless "clearly shown to be erroneous."
>
> *Campania La Flecha vs. Braver*, 168 U. S., 104, at p. 123.

And to the same effect are the following cases:

Morewood vs. Enequist, 23 How., 491.
The Conqueror, 166 U. S., 110, 136.
Illinois vs. Illinois Cent. R. R. Co., 184 U. S., 77, at p. 98.

This rule with regard to the effect of findings of fact concurred in by both courts below should certainly not be less stringent, since for the former Circuit Court, consisting generally of one judge, there has been substituted a court of several judges which is established as a court of last resort in the vast majority of cases. Its decisions were intended by Congress to have much greater weight and authority, with less liability to error than those of the former Circuit Court and subject, of course, to the power of this Court to correct obvious error, it was intended to be the Court of last resort in matters of fact.

This finding that the disaster was caused without the knowledge or privity of the petitioner includes the same finding as to all facts thereby implied as that its officers did not know of, nor were privy to a custom of their ships to run at excessive speed in a fog and did not know of, nor were privy to any defect in the equipment of the vessel which caused or contributed to the disaster.

FIFTH POINT.

The amount received by the petitioner from the French Government, as a subsidy, is not pending freight, and the petitioner was not required to surrender the same to the trustee.

The amount received from the French Government by the petitioner was an annual subsidy, was an entirety, and in no sense dependent upon the events of this particular voyage.

> Acceptance, *Cahier des Charges*, Record, p. 2255, fols. 7045, *et seq.*

And the District Judge has found that there was no evidence that the petitioner received any compensation for the crossing on which the disaster occurred. He said:

> "As to the claim that compensation from the French Government for the crossing from New York to Havre, during which the vessel was lost, should be included in the freight, there is no evidence that the owners received any compensation for this crossing or that the mails may not have been carried by some other steamer" (Record, p. 121, fol. 3737).

The Circuit Court of Appeals sustained this finding of the District Judge, saying:

> "The compensation for the whole service is fixed at 5,480,000 francs, payable in equal monthly installments. We are of the opinion that this subsidy cannot be considered as

freight paid for transport of the mails, one-fifty-second of the whole being arbitrarily apportioned to each round voyage. It must be treated as an entirety; it is the lump sum which the French Government has seen fit to pay in order to stimulate the creation and maintenance of a fleet of steamers of a certain class."

Record, p. 2266, fols 7085, *et seq.*

* * * * * * * *

"In one sense it may be said that by making each double-crossing the steamer making it earned a part of the whole sum, but what part it so earned we cannot say. *The compensation covers not only the crossing steamers but also those held in reserve to take the place of any which may break down*, and, as to all of them, 'in every extraordinary political circumstance, even outside of the case of maritime war' the right secured to the Government to 'purchase or take for freight one or more steamers' the details of whose speed, capacity and construction it has arranged for to suit itself, it seems impossible to say what fraction of the 5,480,000 francs is to be considered the compensation to any single steamer for undertaking to transport the mail on a single trip from New York to Havre. (Record, p. 2266, fols. 7086, *et seq.*)

The only testimony in the Record as to this subsidy is as follows, in answers to interrogatories put to petitioner:

"FIFTH. When with reference to the terms of such agreement, did the year begin and expire in the course of which the voyage of the *Bourgogne* occurred in the course of which she was sunk?

"A. The year has begun on the 22d of July, 1897, and closed on the 22d of July, 1898.

"What amount of money did the petitioner

receive under said agreement for services rendered under said agreement during said year?

"A. 5,473,400 francs" (Record, pp. 87-138, fols. 261, 414).

"THIRTEENTH. (*a*) Was such compensation from the French Government received for carrying mails on the Company's steamers? A. Yes.

"(*b*) What compensation was received, and was it figured on the basis of a yearly allowance or so much per voyage, or on what basis?

"A. In 1898 the Company received 5,473,400 francs, which was the annual allowance.

"Yes (Record, pp. 101-147, fols. 303, 441).

"(*c*) Did not such compensation and agreement provide for fifty-two voyages per year from Havre to New York and back to Havre? A. Yes?"

(Record, pp. 101, fol. 303; p. 147, fol. 441).

There is no suggestion, much less competent proof, in the Record, that any subsidy was received for the crossing on which *La Bourgogne* was lost. In fact the contractor only agreed to carry the mails from Havre to New York, not from New York to Havre (p. 2277, fol. 6660).

It will be seen, by the acceptance of the President of the petitioner of the terms of the contract of subsidy, that the annual subsidy was to be 5,480,000 francs (Record, p. 2255, fol. 7045, *et seq.*). On reference to the interrogatories and answers it will be seen that the allowance that was paid was 5,473,440 francs (Record, p. 2255, fol. 7045, *et seq.*). On reference to the interrogatories and answers *supra*, it will be seen that the allowance that was paid was 5,473,440.

The difference between the amount paid and the amount due under the contract for 52 voyages is not accounted for, nor does it appear whether or not the company received a premium, so that the matter is in doubt, and the finding of the District Court Judge that there was no evidence that the petitioner received any compensation for the crossing on which the disaster occurred, is proper.

The contract of subsidy provides for deductions. The proper conclusion, therefore, is that there was a deduction (see Articles 16, 32, 41, 43 and 44 of the *Cahier des Charges*, Record, p. 2229, fols. 6667, *et seq.*)

Therefore in view of the testimony, read in the light of the provisions of the contract of subsidy, the finding of the District Judge was proper.

Counsel for the claimants insisted before the Courts below that the French Government could hardly be spoken of as a *shipper*. We agree with him, and inasmuch as it is not a *shipper* the subsidy paid by the French Government to the petitioner cannot be considered as freight pending—even if there were proof in the case that such subsidy was paid for the voyage on which *La Bourgogne* was lost. Certainly as there is neither contract to carry, nor proof of carriage of, the mails for the French Government from New York to Havre, the Government was not *a shipper* on that voyage.

The contract between the petitioner and the French Government, provides:

> "ART. 3. The contractor engages to transport gratuitously, all of the mails upon the line from Havre to New York, as well as upon any line, be it a parallel or prolongation, or a

branch, which he may add of his own will to the service which is the subject of the present purchase, and during all of the time that he should maintain these lines.

"He is bound, furthermore, to transport gratuitously all gold, silver and copper coins for the use of the State, and to undertake the carrying of postal packages under the conditions fixed by the laws of the 3rd fo March and 25th of July, 1881."

Article 3, *Cahier des Charges*. (Record, p. 2227, fol. 6660.)

The argument that a part of the *annual* subsidy should be apportioned to this voyage is untenable. It is not made to appear that any part of it depended upon the performance of this voyage by *La Bourgogne*.

There is another reason why there can be no apportionment of the subsidy to particular voyages; the contract provided that in case of war the Government should lease and use the ships. (Contract, Ch. 12, p. 2250, fol. 7031). The contract is not limited to certain services on certain voyages. How can it be computed what part of the entire subsidy during the fifteen years of the contract was for this undertaking of petitioner provided for in the 12th Chapter?

We submit that under no possible consideration can the amount of this subsidy be considered as *freight pending*, and the decision of the District Judge, unanimously affirmed by the Circuit Court of Appeals, should be upheld.

SIXTH POINT.

The petitioner was not required to surrender to the trustee the freight and passage money received by it for the passage from Havre to New York.

The District Court found that the petitioner was not bound to surrender the freight and passage money received by it, either for the voyage from New York to Havre, on which *La Bourgogne* was lost, or the freight and passage money received by it for the preceding voyage from Havre to New York.

Opinion Judge Townsend, Record, p. 1251, fol. 3737, *et seq.*

The *La Bourgogne*, 117 Fed. Rep., 261, at p. 265.

The Circuit Court of Appeals found, as did the District Court, that the petitioner was not bound to surrender to the trustee the freight and passage money received by it for the passage from Havre to New York.

Opinion Circuit Court of Appeals, Record pp. 2263-2265, fols. 7072 to 7081.

The *La Bourgogne*, 139 Fed. Rep., 433, at p. 437.

We contend that the words "freight for the voyage" in Section 4284 should be construed to mean

the freight for the voyage upon which the loss occurred, the word "voyage," as used in the statute and rule, having the meaning recognized in common parlance. Any other meaning would be subversive of the object of the statute and there would be endless contention if the Court abandoning the common and obvious meaning of the word, attempts to construe the word independently in each particular case. That such strife and contention has arisen, and will arise is shown by the text books. *Parsons* in his work *on Shipping and Admiralty*, says:

> "It is perhaps impossible to give any general rule which shall always answer this question, because each case must be judged of by itself; and these cases as they are presented in the books often involve questions of mingled fact and law which are sometimes of great difficulty."
>
> Parsons on Shipping & Admiralty, Vol. 1, p. 308.
>
> See Arnould on Marine Insurance, 7th Edn., Secs.. 369, *et seq.*

The District Court of the United States for the Southern District of New York evidently had the very thing in mind intimated by claimants' counsel, and in order to relieve the Court of the burden of construing the word in each case promulgated a special rule under a special heading, entitled *"Rules and Proceedings to Limit Liability,"* as follows:

> "If a surrender of the vessel is offered to be made to a trustee, the libel or petition must further show whether there is any prior paramount lien on the vessel, and whether she has made any, and if so, what *voyage or trip* since the voyage or trip on which the claims sought to be limited arose, and

any existing lien or liens, maritime or domestic, arising upon any such subsequent *voyage or trip*, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; also the special facts on which the right to surrender the vessel is claimed, notwithstanding such subsequent trip or voyage, and whether the vessel sustained any injury upon or by reason of such subsequent *voyage or trip*."

Rule 7½, District Court Rules.

As stated by the District Court, the word "voyage" is a term of recognized meaning, and has received a legal interpretation accordingly. In the case of *Barker vs. McAndrew*, 18 Common Bench (N. S.), page 759, at page 774, the word was defined as follows:

"Voyage means passage by water from one port or place to another port or place."

Barker vs. McAndrew, 18 Common Bench (N. S.), 759, at p. 774.

In the case of the *Valente vs. Gibbs*, 6 Common Bench Reports (N. S.), page 270, at page 284, Cockburn, C. J., says:

"The term 'voyage' has a well recognized meaning, and has on various occasions received a legal interpretation. Still, no doubt, it is susceptible of a certain degree of flexibility; and, if the context clearly showed that it was intended by the parties to have a larger meaning than that which in common parlance belongs to it we must so contrue it. But unless we can see beyond all doubt that the word is not used in its ordinary sense, we must give it its generally received signification. I can see nothing in this case to justify us in hold-

ing that it means more than the transit from the terminus *a quo* to the terminus *ad quem*.

Valente vs. Gibbs, 6 Common Bench Reports (N. S.), page 270, at p. 284.

Section 4284 of the *Revised Statutes* clearly defines the voyage, the pending freight of which shall be surrendered by the ship owner. It says:

"When any such embezzlement, loss or destruction is suffered by several freighters, or owners of goods, wares, merchandise, or any other property whatever, *on the same voyage*, and the whole value of the vessel and her *freight for the voyage* is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses, * * *."

Revised Statutes, Sec. 4284.

It should be observed that the section refers to freighters "on the same voyage." This presents the question as to who are freighters on the same voyage. Certainly a freighter who shipped his goods to Havre for delivery at New York, and which have been so delivered, is not in the class of freighters who have shipped their goods at New York for delivery at Havre. This proposition seems unanswerable. It therefore follows that the freight for the voyage is that paid by the freighters "on the same voyage," the latter phrase having been added to confine the participation in the apportionment to the freighters for a single voyage. This view is confirmed in the case of the *Norwich Company vs. Wright*, 13 Wall., page 104, at page 111, in which this Court said:

"In the fourth section, the terms 'goods,

wares, or merchandise, or any property whatever,' are equivalent to the words in the third section 'any property, goods, or merchandise,' and of the words 'goods, wares, merchandise, or other property' in the sixth section; in each of which they relate solely to property of some kind put on board the vessel. *And the phrase is added 'on the same voyage,' to confine the participation in the apportionment to the freighters for a single voyage, and not to permit the ship owners to bring into the compensation losses sustained on prior or other voyages.*"

Norwich Company vs. Wright, 13 Wall., 104, at p. 111.

The principle that the participation in the apportionment shall be confined to the freighters for a single voyage, and not permit the shipowners to bring into the compensation losses sustained on prior or other voyages has been followed in a number of cases.

The Alpena, 8 F. R., 280.
Gokey vs. Fort, 44 F. R., p. 364.
The *Rose Culkin*, 52 F. R., p. 328.

See, also,

The U. S. Grant, 45 Fed. Rep., 642.
The Doris Eckhoff, 30 F. R., 140.

The foregoing cases are authority for our contention that the word "voyage" should be given its meaning in common parlance, and that to give it any other meaning would work great injustice to either side, and usually, as intimated by the authorities, to the freighter or passengers.

The case of *The Alpena*, 8 Fed. Rep., 280, was a proceeding to limit the liability of the shipowner

for losses arising out of the foundering of *The Alpena* in a gale on the 16th day of October, 1880. The petitioner alleged that a libel had been filed against him to recover damages alleged to have been sustained in collison between a schooner and *The Alpena* on the 10th day of September, 1880, which was previous to the collision.

One of the questions submitted to the Court for its decision was:

> "Can the liability of the owner of the steamer be limited, under the law, to any loss or damage except that occurring on the last voyage, or the voyage in which the steamer was lost?" (p. 282).

As to this question, the opinion in the case states:

> "It was conceded on the argument that the steamer was, during the season of 1880, up to the time of her loss, engaged in running regular daily *trips or voyages* between the ports of Chicago and Grand Haven, on Lake Michigan, and that the collision between the steamer and the schooner *Stockbridge* (above referred to) occurred on a *trip* over a month prior to the commencement of the *trip* in which the steamer foundered and sunk" (p. 282).

The question is disposed of by Judge Blodgett as follows:

> "I am clearly of opinion that the casualties or losses of different voyages cannot be aggregated or grouped together, say at the end of a season, or when a final catastrophe ensues, and all the losers be cited in to share what has been saved from shipwreck or other disaster, together with the pending freight, and have a decree entered exonerating the owners from personal liability. *It seems to me that each*

voyage or trip, each separate journey, which the ship makes from one port to another, must be treated as a separate venture, involving its own particular hazards, losses and earnings;
* * * * * * *

"The owner, freighters, and passengers on any particular voyage may be said to have a common interest for that voyage. They may be compelled to contribute for jettisons made for the common safety under certain circumstances. But *there is nothing in common between the freighters and passengers of different voyages."*

The Alpena, 8 F. R., 280, at p. 283.

In the case of *Gokey vs. Fort*, 44 F. R., 364, the libellants sought to recover a bill of repairs in May, 1880. The respondents set up as a defense proceedings for the limitation of their liability subsequently taken for a collision about two months after the repairs were made. Judge Brown said:

> "In the case of *The Alpena*, 8 Fed. Rep., 280, it was held by Judge Blodgett, in construing the Act of 1851, and the provisions of the Revised Statutes, that each voyage or trip—
>
> > 'Must be treated as a separate venture, involving its own particular hazards, losses, and earnings; and that, when each such voyage is ended, it is for the owner to decide whether the losses have been such as to make it expedient for him to invoke the protection given by this act of Congress. * * * The language as well as the evident reason of the statute shows that this proceeding can only be had for the purpose of apportioning the owner's interest between several persons who have suffered losses on the same voyage.'

"Claims arising out of prior voyages were, therefore, held excluded from the limited liability proceedings, and not to be bound by the decree therein. I concur in the conclusions reached by Judge Blodgett in that case, although the practice seems to be that liabilities for torts arising out of a prior voyage, unliquidated and undefined in amount, and often wholly unknown may be limited upon a surrender of the vessel or her value after a subsequent voyage; the value and freight being determined according as they existed at the close of the prior voyage. See *The Benefactor*, 103 U. S., 239, 245-9; Ben., 44, 47; *The City of Norwich (Place v. Transportation Co.)*, 118 U. S., 468, 491, 6 Supt. Ct. Rep., 1150; *The Great Western*, 118 U. S., 525, 6 Sup. Ct. Rep., 1172; *The Doris Eckhoff*, 30 Fed. Rep., 140. I think the act of 1884 is doubtless to be treated as *in pari materia* with the act of 1851 (Rev. Stat., Secs. 4233, 4285), and designed to extend the act of 1851 to cases of the master's acts or contracts, and thus to bring our law into harmony with the general maritime law on this subject. *Butler v. Steamship Co.*, 130 U. S., 527, 553, 9 Supp. Ct. Rep., 612; *The Amos D. Carver*, 35 Fed. Rep., 669; *Force vs. Insurance Co., Id.* 778; *Miller v. O'Brien, Id.* 779, 783. The act of 1884, like the act of 1851, limits the owner's liability to the 'value of such vessel and freight pending.' *But there is no 'freight pending,' except upon the current voyage; and this shows that the debts of the last voyage only are intended.*"

Gokey vs. Fort, 44 F. R., p. 364, at p. 365.

The case of *The Rose Culkin*, 52 F. R., p. 328, was a proceeding for a limitation of liability. Judge Brown referring to the case of *The Alpena, supra*, said:

"*The Alpena*, 8 Fed. Rep., 280, where the pe-

titioner sought to group together, under one surrender, the claims of several creditors arising out of different voyages, viz., that of one creditor for collision damage, who had sued the owner *in personam*, and the claims of various other damage claimants arising out of the stranding of the vessel on a voyage five weeks after the voyage on which the collision occurred; and the petitioner surrendered the wreck, strippings and freight upon the last voyage, claiming a discharge from both sets of creditors. Judge Blodgett held that this could not be done; and that the former collision claimant was not bound by the proceeding.

"There can be no doubt, I think, of the correctness of that decision, for the conclusive reason that the owner had there disabled himself by his subsequent employment of the vessel and by her stranding, from effectively 'transferring his interest in the vessel,' as it existed at the close of the former voyage. The statute (Section 4283) limits the shipowners' liability to 'the value of his interest in the vessel and pending freight,' and this means as they exist at the close of the voyage (*City of Norwich*, 118 U. S., 468, 491-493; 6 Sup. Ct. Rep., 1150. And see *Gokey vs. Fort*, 44 Fed. Rep., 364; *The Abbie C. Stubbs*, 28 Fed. Rep., 720; *The Anna*, 45 Fed. Rep., 900). To tender afterwards something of materially less value is not a compliance with the statute. The 'transfer' required by Section 4285 is a transfer of the same valuable 'interest' which Section 4283 prescribes as the limit of liability. *If by the owner's acts or laches the 'value of his interest in the vessel' is substantially diminished, he is no longer able by a surrender of the vessel to 'transfer' the interest or value which the statute contemplates; the creditor in that mode of proceeding would not get 'the value of the owner's interest'* (Section 4283) *at the*

close of the voyage. The shipowner's right to proceed by surrender must, under such circumstances, therefore, be held lost, though the right to proceed by either of the other three methods pointed out by the Supreme Court, including that by giving security for value at the close of the former voyage, might remain."

The Rose Culkin, 52 F. R., p. 328, at p. 332.

In *The Mary Adelaide Randall*, 93 Fed., 222, some of the definitions of "voyage" are collated and it is there held that the word in its maritime sense meant the transit at sea from one terminus to another; and the Court of Appeals, affirming the judgment, speaks of a voyage as signifying in its strict sense the "actual transit of the vessel from port to port."

The Mary Adelaide Randall, 93 Fed., 222, 98 Fed., 895.

In *The Giles Loring*, 48 Fed., 472, Judge Webb held:

"By the charter party one-half of the freight was earned and payable on right delivery of the outward cargo from Boston to the west coast, and that half was accordingly paid. The other half was freight pending when the voyage terminated, and would be earned only on delivery of the cargo at its destination, before which it was of no value to the owners. *The City of Norwich*, 118 U. S., 491, 6 Sup. Ct. Rep., 1150. As that portion of the freight was never earned, nothing is to be added on its account to the value of the vessel, for the purpose of showing the amount of the owner's liability."

The Giles Loring, 48 Fed., 472.

We will conclude by quoting from the opinion of the District Judge, his reasoning being abundantly supported by the authorities cited in this brief:

> "In support of this contention claimants quote from the contract between the owners and the French Government, and the law under which it was made, as follows:
>
> "The service to be performed includes a weekly line from Havre to New York, or *fifty-two voyages, going and returning.* The distance to go is 3,130 miles per *crossing*, and 6,260 miles per *voyage*, going and returning. * * * At the end of each annual period comprising the total of fifty-two *voyages* going and returning, there shall be prepared a summary of the result of each *crossing*."
>
> "They insist that 'voyage' and 'crossing' should not be given the same signification.
>
> "It may be true that in litigation based upon the contract of carriage the petitioner would be bound by its interpretation of the term 'voyage' in the contract. Thus, in actions on insurance policies, containing limitations as to voyages undertaken, the question of the intentions of master and owner as to the enterprise entered upon are material as to the voyage.
>
> "Seth Paddock vs. The Franklin Insurance Company, 11 Pick., 227, 231.
>
> "George Friend *et als.*, vs. Gloucester Mutual Fishing Insurance Company, 113 Mass., 326.
>
> "But it is not clear how such interpretation is relevant in the determination of the extent of the limitation of liability under the act. This act was intended to provide a general rule whereby a shipowner might measure his responsibility for loss in certain cases.
>
> "As the Supreme Court said in *The Main* 152 U. S., 122: 'The real object of the Act in question was to limit the liability of vessel

owners to their interest in the *adventure.*' This liability alone he assumes when he becomes a part owner, and in the absence of waiver on his part, it should not be extended to include other adventures merely because an agreement entered into between shippers and shipping agents provides that for the purposes of some particular engagement or employment a round trip or a certain number of trips shall be considered a voyage" (Record, p. 1248, fols. 3729, *et seq.*)

* * * * * *

"The object of the statute would be defeated if owners were to be held liable for the amount of freight prepaid on previous passages or trips, because, as between shipper and shipowner, the contract had stipulated that the successive trips should be treated as a single voyage.

"The money paid for the crossing from Havre to New York did not constitute any freight which the petitioner was bound to deposit" (Record, p. 1251, fol. 3737).

SEVENTH POINT.

A decree should be entered that the Circuit Court of Appeals was without jurisdiction to reverse or modify the decree of the District Court by Judge Townsnd entered on the 22nd day of March, 1902, and that so far as the decree of the Circuit Court of Appeals is inconsistent with that decree, it be reversed, and that the writ of certiorari granted to the petitioners Deslions and others be dismissed, with costs to the respondent.

EDWARD K. JONES,
Proctor for La Compagnie Générale
Transatlantique.

WM. G. CHOATE,
EDWARD K. JONES,
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Of Counsel.

Office Supreme Court, U. S.
FILED
DEC 24 1907
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States,

OCTOBER TERM, 1907.

GEORGE DESLIONS, et al.,
Petitioners,

against

LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE,
Respondent,

No. 33.

BRIEF IN BEHALF OF LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE ON QUESTIONS ARISING UNDER ITS COUNTER WRIT OF CERTIORARI.

EDWARD K. JONES,
Proctor for La Compagnie Générale Transatlantique.

WM. G. CHOATE,
EDWARD K. JONES,
JOSEPH P. NOLAN,
Of Counsel.

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Supreme Court of the United States,

OCTOBER TERM, 1907.

George Deslions, *et al.*,
Petitioners,

against

La Compagnie Générale Transatlantique,
Respondent.

No. 33.

Brief on behalf of La Compagnie Générale Transatlantique on questions arising under its counter Writ of Certiorari.

Statement.

For purposes of convenience as in the briefs of both parties heretofore presented in this case the respondent herein will be referred to as the "petitioner" and the other parties as the "claimants."

Under this Writ of Certiorari the petitioner seeks for a review of the points decided by the Circuit Court of Appeals in this case adversely to the petitioner

Assignment of Errors.

The petitioner assigns the following errors in the decisions and order of the Circuit Court of Appeals.

1. Said Court erred in holding that the steamship *Bourgogne* was in fault for the collision, and in not holding that petitioner was free from all liability therefor.

2. Said Court erred in holding that the decree of the District Court entered by Judge Townsend on March 22nd, 1902, was not a final decree.

3. Said Court erred in holding that the prepaid freight and passage money for the voyage from New York to Havre on which the *Bourgogne* was lost was pending freight within the meaning of the statute, U. S. Rev. St., Sec. 4283.

4. Said Court erred in holding that the claimants for loss of life should have been allowed to present and prove their claims before the commissioner.

5. Said Court, and the District Court, erred in holding that the limitation of the amount of the liability contained in the conditions of the passage tickets were not valid and binding upon the passengers, and in allowing damages in excess thereof.

6. Said Court, and the District Court, erred in making any allowance for damage to the claimant Deslions, and also in the amount allowed him.

FIRST POINT.

It was error in the court below to find the Bourgogne at fault for the collision in respect to the shippers of goods and passengers on board, and a decree should be entered declaring the petitioner free from all liability by reason thereof.

By its original petition this petitioner sought to have determined the question of its liability for the collision between the *Bourgogne* and the *Cromartyshire*, which took place on the 4th of July, 1898, on the high seas, in accordance with the statute and rules of this Court made thereunder. The District Court and the Circuit Court of Appeals both determined this question adversely to the petitioner.

The District Court found as a matter of fact that the *Bourgogne* was proceeding at a speed of ten knots an hour in a dense fog; that this was not a moderate speed and that it caused or contributed to the collision. From this conclusion the petitioner appealed (Record, pp. 2209, 2212, 2214).

The Circuit Court of Appeals upon a review of the case, being of opinion that she was not going slower and probably was going faster than ten knots, concurred with the District Court in this conclusion (Record, pp. 2266-2267).

It is quite evident that both courts applied to the decision of this question the rule which prevails in our Courts of Admiralty in respect to what

constitutes moderate speed in a fog under the international rule, and it is not claimed by the petitioner that upon the facts so found this conclusion would be erroneous, if this question between the claimants and the petitioner is properly to be determined by our rule and by the test which our courts apply as to what constitutes moderate speed in a fog. But the record before the Court discloses the fact that a diversity exists between the French law and our own in respect to what constitutes moderate speed in a fog, and in respect to the test by which such moderate speed is measured.

We beg leave to refer the Court to the discussion of the effect of this diversity between the law of France and the law of this country on this subject as it affects the determination of the question whether the petitioner was chargeable with fault whereby it would lose the benefit of the statute for the limitation of its liability in case its ships with its knowledge and consent, although proceeding at a speed exceeding what is held to be moderate by the courts of this country, kept within the limits of the speed held to be moderate by the courts of France. We refer to the discussion in our former brief, from page 134 to page 148.

The argument there addressed to the Court in exoneration of the petitioner on the question of the limitation of its liability applies with equal force to the question of the fault of the *Bourgogne* and to its liability to these claimants for the effects of the collision. That the *Bourgogne* was within the limits of speed held to be moderate by the law of France in its interpretation of the international rule is entirely clear. The speed found by the District Judge was ten knots an hour (Record, p. 1258, fol. 3759). The finding of the Circuit Court of Ap-

peals as to speed was that she "was certainly not going any slower, and probably was going faster, than ten knots" (Record, p. 2267, fol. 7091).

In the case tried in France the finding of the French Court was that she was going at a speed of about twelve knots, which was neither excessive nor contrary to the regulations; that she steered best at fourteen knots and that she was bound in the fog to get as near as possible to that speed; that it is demonstrated that she did it.

Resal v. *Compagnie Générale Transatlantique*. Record, pp. 1222, 1225, 1240.

Upon the trial of the case of the *Cromartyshire* against The Compagnie Générale Transatlantique in England, Lord Justice Sir Gorell Barnes expressed the opinion that she was going at full speed reduced, which is not inconsistent with the finding of either of the other courts. It was not necessary for the case before him to find with precision the actual speed of the ship.

It would seem that these judicial determinations were sufficient to show that she was not exceeding the speed which is held to be moderate according to the French rule.

The learned District Judge says:

> "The evidence tends to prove that the proper "officers were on deck and attentive to their "duties up to the time of the collision, so that "there is no imputation of negligence except in "the matter of speed. About four o'clock in the "morning the steamer encountered a dense fog "which prevailed at the time of the collision. "The siren was blown regularly from some "time after four o'clock. A number of wit- "nesses, including Corre, the steersman of *La* "*Bourgogne;* Laisne, the fourth engineer; For-

"tin, a fireman; Scol, the second purser, and "several of the crew of *La Bourgogne*, testify "'that she was slowed down at the time of the "collision" (Record, p. 1257).

The testimony thus referred to by the District Judge, credited by him and made the basis of his finding of fact, is as follows:

Owing to the fact that all of the officers of *La Bourgogne* on duty were lost in the collision, the petitioner was compelled to call as its witnesses, on the question of speed, the oilers, stokers and firemen at the time of the collision, who were saved, and the fourth assistant engineer.

These witnesses testified that for about three quarters of an hour previous to the collision the doors of the ash boxes had been closed and kept closed, and the fire allowed to run down: (Fortin, p. 628; Hamel, pp. 782-783; Le Julien, p. 791; Allain pp. 778-781; Ralle, pp. 431-433). One of the firemen testified that she was slowed down two or three times before the collision (Calvary, pp. 708, 723). There was a reduction to about forty-three revolutions per minute (Calvary, p. 709). He saw the engineer closing the throttle in order to slow down (Calvary, pp. 722, 723). The witness Ralle testified that the gauge stood at 9½ kilos. which represents a pressure of 132 lbs., as against 162 lbs. for 11½ kilos., which is full pressure (pp. 432, 433). The fires were kept very low for about an hour before the collision (Allain, p. 779; Fortin, pp. 628, 632-633; Le Julien, p. 791). They put very little coal on the fires, some time previous to the collision (Le Julien, pp. 794-795). They were ordered not to stir up the fires, owing to the fog (Allain, p. 779). Laisne, fourth assistant engineer, though not

on duty, got into the engine room within a minute after the collision (p. 487); the engine had stopped (p. 428); if she were going at full speed and suddenly stopped, the safety valves would have gone off, and made a frightful noise. No steam was escaping from the safety valves (p. 428). When speed is reduced there is a peculiar noise or whistling in the pipes; Laisne heard this noise (p. 487); this was also heard by Pironneck (pp. 857-858), who testified that she was going at half speed (p. 862).

Laisne was confirmed as to the effect of sudden stopping from full speed, by an expert engineer, Mooney (pp. 1004, 1005).

The witness Voisin, who was oiling the connecting rods, testified that she was going slowly, as he judged by the speed of the connecting rod (pp. 760-761). Scol, the assistant purser, testified that he noticed that they were going slowly, by the beating of the engine (pp. 810-811).

The French court, in its decision, which will be found in the record at pages 1233 to 1244, reviews the testimony of the various witnesses who testified as to the question of speed, and then found, that on all the facts, *La Bourgogne* "ought probably not to have exceeded twelve knots." We refer the Court to the discussion by the Civil Tribunal of the Seine, of the testimony of the various witnesses, which will be found at page 1239 of the record. It shows that that Court reached its conclusion after having carefully studied the testimony of the various witnesses.

The witness Laisne testified that as *La Bourgogne* was loaded, her full speed was about sixteen knots. Both courts found a considerable reduction of speed, and it could hardly have been considerable without reducing it to at least twelve

knots, which was well within the limit of "moderate," by the French rule.

Resal vs. Compagnie Générale Transatlantique (Record, pp. 1240, 1225).

It will be noticed that on the question of speed both the Court of first instance, and the Court of Appeals, in France, found the speed to be twelve knots. The former court gave judgment for the complainant on the ground that the captain attempted to get to Sable Island, sixty miles away, when the situation made this impossible, and in consequence many lives were lost. On this question both the Court of Appeals and the Court of Cassation reversed (Record, pp. 1241-1244, 1228-1230, 1232). In the Court of Cassation the charge of excessive speed was abandoned (Record, pp. 1231-1232). This is very strong evidence that upon the proofs no such point was tenable.

It appeared also by the record of the French Court, that in an independent inquiry before Captain Aubert, who was appointed by the French Government, through the Minister of Marine, to make the inquiry (Record, p. 1235, fol. 3689), the same result of twelve knots was reached (Record, pp. 1237, 1240). This then gives five independent determinations, four of them judicial, that on the proofs her speed did not exceed twelve knots.

Assuming then that the speed of the *Bourgogne* did not exceed twelve knots an hour, which the French courts have decided was the speed at which approximately she was under the fullest control (Record, pp. 1225, 1240), then the question arises whether as between these claimants, who were passengers or representatives of passengers and shippers of goods upon the steamer at the time of the

loss, and her owner, she can be held to be at fault for the collision in going at such speed.

We can add very little to the discussion of this question set forth in our brief on pages 139 to 148, in confirmation of the view there expressed that it is the French law and the French law only in respect to this question to which the passengers and freighters on the ship are subject and which the master is justified in following. We would, however, refer the Court to the opinion of *Lord Justice Brett, in The Gactana and Maria, L. R. 7 P. D.*, 137-146. In that case it was held that an English shipper on an Italian ship subjects his goods to the power of the master to hypothecate them according to the Italian law, though under the same circumstances the English law would not justify the hypothecation, and the learned Judge says:

> "If a merchant puts his goods into the power "of an Italian master on board an Italian own- "er's ship, what is the meaning of the trans- "action, but that he is to deal with the goods "as an Italian master is to be taken to deal "with goods on board his ship unless he is "bound to another mode? Upon principle it "seems to me that he who ships goods on board "a foreign ship, ships them to be dealt with by "the master of that ship according to the law "of the country of that ship, unless there is a "stipulation to the contrary. Therefore when "these goods were shipped on board the Italian "ship, it seems to me that by the contract of "the parties arising out of that shipment it "must be taken that the goods were to be dealt "with under circumstances which might arise "and which are generally considered likely to "arise by all maritime countries, in the way "in which that master would deal with the "goods according to the law of Italy, unless "there was some stipulation to the contrary."

And in *Lloyd* vs. *Guibert*, L. R., 1 Q. B., 127, it was held that the goods of an English shipper on a French ship were subject to the French law limiting the owner's liability and that the owner's personal liability with respect to the goods was thereby discharged.

The only difference in the application of the principle thus invoked to the question of the entire exemption of the owner and to the question of his right to a limitation of liability, is that in respect to the former the question is whether the ship was conforming in fact immediately before the collision to the rule as interpreted in France, whereas in respect to the latter, the question is, whether there was proof that the owners had knowledge of and approved or assented to a customary violation by their captains of the rule as interpreted in France. It is confidently claimed that upon the testimony appearing in the record the *Bourgogne* did not violate in fact on this occasion the rule as interpreted by the French courts, and therefore was not at fault and the petitioner is entitled to a decree that it is free from all liability.

The principle we contend for is distinctly recognized by this Court in the case of the *Scotia*, 14 Wall., 170, 184, and also in the case of the *Belgenland*, 114 U. S., 355, 370. In the case of the *Scotia* the Court says (p. 184):

> "We concede also that whether an act is "tortious or not must generally be determined "by the laws of the place where the act was "committed. But every American vessel, out- "side of the jurisdiction of a foreign power, is, "for some purposes at least, a part of the Amer- "ican territory, and our laws are the rules for "its guidance. Equally true is it that a British

"vessel is controlled by British rules of nav-
"igation. If it were that the rules of the two
"nations conflicted, which would the British
"vessel, and which would the American, be
"bound to obey? Undoubtedly the rule pre-
"scribed by the government to which it be-
"longed. And if, in consequence, collision should
"ensue between an American and a British ves-
"sel, shall the latter be condemned in an Amer-
"ican court of Admiralty? If so, then our law
"is given an extra territorial effect, and is held
"obligatory upon British ships not within our
"jurisdiction. Or might an American vessel be
"faulted in a British Court of Admiralty for
"having done what our statute required? Then
"Britain is truly not only mistress of the seas,
"but of all who traverse the great waters. It
"is difficult to see how a ship can be con-
"demned for doing that which by the laws of its
"origin or ownership it was required to do, or
"how, on the other hand, it can secure an ad-
"vantage by violation of those laws, unless it is
"beyond their domain when upon the high
"seas."

The Scotia, 14 Wall 170, at p. 184.

And in the *Belgenland*, 114 U. S., 370, the Court says:

"The rule requiring the application of the
"general maritime law to such cases [that is,
"between parties or ships of different nation-
"ality, arising on the high seas] has some
"qualifications, which, though not affecting the
"present case, should always be borne in mind.
"One of these qualifications is, that the per-
"sons in charge of either ship will not be open
"to blame for following the sailing regulations
"and rules of navigation prescribed by their
"own government for their direction on the
"high seas; because they are bound to obey

"such regulations The *Scotia*, 14 Wall., 170, "184."

The Belgenland, 114 U. S. 355, at p. 370.

If this is the true doctrine as applied to cases between ships of different nationalities, yet more certainly does it apply as between the ship and the shipper or the passenger who by entrusting himself or his goods on the ship submits himself, so far as the power and duty of the master is concerned, to the law of the country to which the ship belongs.

On this point the burden is on the claimants. The permission to raise this question in this proceeding is equivalent to providing for the trial of an action by the claimants, or some of them, against the petitioner to recover damages for the alleged fault of navigation. And, unless the proofs sustain the charge, it must be dismissed, and the petitioner exonerated.

It seems hardly necessary to point out that whatever may be the fact as to the actual speed of the ship at the time of this collision, there is no evidence in the record that it was the custom of the captains to exceed the limits of speed allowed by the French rule or that the petitioner had any knowledge of or connivance in any such custom, if it existed.

SECOND POINT.

The decree of Judge Townsend was a final decree.

We have discussed this question fully in our principal brief.

In our application for a cross *Writ of Certiorari* we enumerated this question among those which we desired to raise if the writ was granted, although we have assumed in our former brief, and it seems not to be questioned by the learned counsel for the claimants, and we believe we were correct in assuming that as the question involved is one of the jurisdiction of the Circuit Court of Appeals, it was open under the writ granted to the claimants.

We may, however, call the attention of the Court to the case of *Montgomery* v. *Anderson*, 21 How., 386, which may be thought to have some bearing on this question. In that case the appellees, *Anderson*, and another, filed a petition in the District Court of the United States for the Eastern District of Missouri, stating that they had by the laws of Missouri, a lien on the steamboat *Republic* for $2,000, which they had loaned to the clerk of the boat to purchase supplies and necessaries, in order to enable her to proceed on a voyage from St. Louis to New Orleans; that the vessel at the time the petition was filed was under seizure in the district, in a case of admiralty and maritime jurisdiction, and had been ordered by the Court to be sold, and the petitioners prayed that they might be permitted to

intervene for their interest and be paid out of the proceeds when the steamboat was sold.

The appellants, *Montgomery and another*, answered stating that they were the owners of 7/8ths of the vessel, and denied that the money was needed or used for supplies and insisted that the boat was not liable for it, and that it was not a lien by the laws of Missouri.

After the filing of the petition the vessel was sold, the sale reported and the proceeds paid into the registry of the Court. The proceeds amounted to $26,250.

Testimony was taken upon the petition of the appellees; and the Court decreed that the sum claimed by the petitioners was due, with interest and costs, and that it was a lien on the boat, and the matter was referred to a commissioner to compute and report the amount due. The commissioner having made his report and found the amount due for principal and interest, to be $2,034, the report was confirmed by the Court and a decree was entered, adjudging that there was due from the fund then in Court to the petitioners the sum of $2,034, *but that inasmuch as some of the causes against the Republic had not then been determined and the fund in Court might not be sufficient to satisfy all of the claims that might be established against the vessel, no order for the payments of the money would be made by the Court until it should be further advised in the premises.*

In this state of the matter the appellants appealed to the Circuit Court, where further testimony was taken and the decree of the District Court was affirmed and the case remanded to the District Court to carry out the decree. From this decree of the Circuit Court an appeal was taken to

the Supreme Court. It was held that the decree of the District Court was not final or the subject of an appeal.

The position of the petitioner in that case was analogous to the position of a *libellant* asserting a claim against a vessel and seeking recovery of the amount to which he was entitled. A decree in his favor as to the validity of his claim, but leaving the amount for which he is to have judgment undetermined is not final.

Mordecai v. Lindsay, 19 How., 199.
The Palmyra, 10 Wheaton, 502.
Chace v. Vasquez, 11 Wheaton, 429.

Although the petitioner in the decree appealed from had his lien established as valid and the amount of the lien determined, yet the decree did not determine but left open for further proceedings the amount which he should ultimately recover; therefore it was held the decree in his favor was not final.

As *Chief Justice Taney* says (21 How., 388):

> "Indeed, it was not final even as to the "amount in controversy between these parties, "for the amount to be awarded to the appellees "was made to depend upon the amount of "other claims upon the fund, which were then "depending before the District Court."
>
> Montgomery v. Anderson, 21 How., 386, at p. 388.

Moreover, the decree in that case was not final in another sense. It determined the right of one of the claimants to a fund in court to participate in its distribution without determing the relative proportion to which he was entitled and without de-

termining the rights of other parties entitled to share in the same fund.

As the Court said (page 387):

> "But, upon the transcript itself, it appears "that there was no final decree in the District "Court, upon which an appeal would lie to the "Circuit Court. No final disposition of the "fund in the registry."
>
> Montgomery v. Anderson, 21 How., 386, at p. 387.

The question determined in the case at bar in the first decree—that of Judge Townsend—was that the petitioner was entitled to his limitation of liability.

There is no analogy between such a decree and the decree in *Montgomery* v. *Anderson*—that the petitioner was entitled to share in a fund in a pending suit by reason of a lien which he had upon the vessel out of which the fund grew, leaving the amount of his recovery to be determined by subsequent proceedings of the Court. An analogous appeal in the case of the *Bourgogne* would have been an attempted appeal by other claimants against a decision allowing Deslions' claim for instance, as entitled to participate in the fund, but without determining what part of the fund he is entitled to.

The utmost effect of the decision in *Montgomery* v. *Anderson* in this respect is, that *upon the question of the distribution of a fund in court* no appeal would lie until a decree is made which directs a complete distribution of the fund, and that case does not affect the conclusion to be drawn from the decisions we cited—that where the decree in question finally disposes of the controversy between the parties, and the subsequent proceedings are neces-

sary only to carry the decision into effect, the decree is final.

The case of *Montgomery* v. *Anderson* was cited and the effect of it stated in *Hohorst* v. *Hamburg-American Packet Company*, 148 U. S., 265.

This, therefore, is not in conflict with, but sustains the position taken in our principal brief, that the decree entered by Judge Townsend was a final decree so far as it granted limitation of liability.

THIRD POINT.

The Circuit Court of Appeals erred in holding that the freight and passage money received by the petitioner for the voyage from New York to Havre on which the ship was lost was freight earned for the voyage.

Judge Townsend, in his opinion in this case, carefully reviews the law applicable to the question of pending freight, and decided that the freight and passage money for the voyage from New York to Havre was not pending freight.

We quote from the opinion of the District Judge:

"The question of freight is an interesting one, and, as no precedents have been cited by counsel on either side, it is probably novel and must be decided as a matter of first impression. What construction is to be given to the term "pending freight" in the statute?

"The freight money was not actually earned under the ordinary rules of law. The petitioner claims

that this prepaid money has in fact been returned to the parties who paid it or to their representatives. But claimants, with apparent reason, maintain that if these parties were not legally entitled to receive it, and it is properly included in the statutory term "pending freight," such payment does not operate to relieve petitioner from its obligation to pay such freight into Court. The natural meaning of the words "pending freight" is freight dependent or contingent on the completion of the voyage. Until the voyage is completed it is not earned. That part of the contract which provides that it should not be returned, even in cases of loss, is more nearly like a contract of insurance than of affreightment. Substantially, the passengers and shippers insure the owners against loss to the extent of the money thus paid but not earned. But the owners are not obliged to surrender insurance money in order to limit liability.

City of Norwich, 118 U. S., 468."

"The term "pending freight" has been generally used in the cases in the sense of freight to be earned by the carriage of the specific goods or passengers on board the vessel at the time of the loss.

"Thus in *The City of Norwich, supra,* the Supreme Court says:

> 'Pending freight is of no value to the shipowner until it is earned, and it is not earned, if earned at all, until the conclusion of the voyage. * * * * * If, however, by reason of the loss or sinking of the ship the voyage is never completed, but is broken up and ended by causes over which the owners have no control, the value of the ship (if it has any value) at the time of such breaking up and ending of the voyage must be taken as the measure of the

owners' liability. In most cases of this character no freight will be earned.'

"And in *The Main, supra,* it is said that the property to be assessed comprises whatever is on board for the object of the voyage belonging to the owners, whether such object be warfare, the conveyance of passengers, goods or the fisheries."

"The Court further says:

'The words 'freight pending,' in Section 4283, or 'freight for the voyage,' Section 4284, were copied from the English statute of George II, which, in turn, were copied from the Marine Ordinance of 1681, and the prior Continental codes; but in both cases they were evidently intended to represent the *earnings* of the voyage, whether from the carriage of passengers or merchandise If these words were used instead of the words 'freight for the voyage,' it would probably more accurately express the intent of the legislature.'

"And in *The Abbie C. Stubbs,* 28 Fed., at page 720, Judge Nelson holds as follows:

'When a ship-owner sends his ship to sea, so far as his liability for collisions and other losses happening througth the fault of those in charge of her, and without his privity or knowledge, is concerned, he puts at risk only his ship, the expense of navigating her, and the freight she may earn on the voyage. His responsibility is limited to the capital embarked in the adventure, and the profit he may gain from it in the form of freight, or its equivalent. If the ship is sunk or destroyed, and no freight earned, his whole responsibility is at an end. If either or both are saved, in whole or in part, to that extent his liability remains. The words, 'her freight then pending,' as used in Section 4283, must at least include

> freight earned at the end of the voyage, for cargo on board at the time of the collision, which is this case.'

"He holds that certain demurrage on the passage when the voyage terminated, is of the character of freight pending, and that such freight during the voyage or charter, in the performance of which the losses were caused by the master, should be surrendered.

"Crump in his work on Marine Insurance and General Average, says: 'To constitute freight a contributing interest it must have been pending at the time of the sacrifice."

"It seems more consonant with the tenor of the foregoing decisions that, unless the freight and passage money are pending in the sense that they are earned as the result of the maritime adventure, they do not fall within the terms of the statute. The case of *The Main*, *supra*, cited by counsel for claimants, does not sustain their contention, because in that case the voyage was completed and the freight earned."

The Circuit Court of Appeals, in its opinion reversing the District Judge on this point, relies upon the case of *The Corona*, 114 Fed. Rep., 877, certiorari denied, 187 U. S., 640, and holds that the contract of carriage in that case was the same as the contract or carriage in this case.

That case, however, does not apply to the case at bar.

There seems to be little to add to the opinion of the District Judge quoted above. But as the Circuit Court of Appeals relies upon the case of *The Corona*, *supra*, to support its contention, we will call this Court's attention to the fact that the stipu-

lation in that case, and in the present case, are radically different.

The stipulations in the two cases are as follows:

Corona Case.	This Case.
	Passage Ticket.
In the *event* of the loss or detention of the steamer during the voyage, the vessel, her owners or charterers shall not * * * refund the amount of passage money (*The Corona*, 114 F. R., p. 877; at p. 882).	Passage money is to be paid in full before the departure of the steamer, and at *all events*, belongs to the company (Record, fol. 3254).
	Bill of Lading.
	Also the freight prepaid will not be returned, goods lost or not lost (Record, for. 3233).

In *The Corona* case there was doubt if the passage money would be actually earned, because it was only in the event of the loss or detention of the steamer during the voyage that the vessel, her owners, or charterer, should not refund the amount of the passage money, which left three contingencies, any of which would make the passage money pending freight. The first contingency was that the passenger might demand the return of the passage money before the sailing of the vessel; second, that the vessel should begin her voyage; and, third, that she would complete her voyage. Also that the vessel, her owners or charterers, shall not refund the passage money. Thus the controlling idea of pending freight—that it must be at risk—was present in the *Corona* case

In this case, the right of the owner of the ship, not the ship, to the passage money is absolute. It does not depend upon the ship completing her voyage, or upon any other contingency. If the stipu-

lation is valid, then the amount of the passage money was never at risk, it belonged to the owner of the ship immediately upon the issue of the ticket or bill of lading, and no act of the passenger or of the ship herself could transfer the title of it.

In this case, the stipulation is one that was *executed* before the voyage began, in *The Corona* case it was *executory.*

Nor can it be said that in this case the freight and passage money were "embarked in the adventure."

It may also be suggested that the denial of the writ of *certiorari* by this Court is not equivalent to an approval of the decision sought to be reviewed thereby. The writ may be denied on grounds wholly independent of such approval and the case of t[h]e *Corona* has only the authority of the Circuit Court of Appeals and is open to reconsideration in this Court.

FOURTH POINT.

The Circuit Court of Appeals erred in holding that the life claimants should have been permitted to present their claims before the Commissioner.

STATUS OF THESE LIFE CLAIMS.

It appears by the report of the Commissioner appointed by the District Court that claims were filed with him for damage resulting from the death of passengers of the *Bourgogne* either by administrators or next of kin, or relatives of the deceased, in a very large number of cases These are enumerated on pages 78, 79, 80 and 81 of the Record.

It having been held by Judge Townsend that these claims should not be presented to the Commissioner for adjudication, no action has been taken in this cause in regard to these claims except the filing of the claims.

No adjudication has been made with regard to the amount of damage in any of these cases nor in regard to the claimant's right to represent the deceased or to recover damage by reason of their deaths. Most of the claimants claim damages as administrators of the deceased passengers. Some as next of kin; some as husbands and fathers for the loss of wife and children.

It is alleged in the petition that actions at law for loss of life have been commenced against the petitioner in the Circuit Court of the United States in New York, Louisiana and Illinois and in the

State Courts of New York, Pennsylvania and Illinois, some of which have been removed into the Circuit Courts of the United States (Record, pp. 1-22), and suits in Admiralty in the District Courts of the United States and Illinois (Record, pp. 22-28).

The prosecution of all actions has been stayed by the commencement of this proceeding and by the order of the District Court in this case pending this proceeding.

Argument.

The claims so far as they are filed allege that by reason of the law of France the petitioner is liable for damages for loss of life caused by the fault and negligence of the petitioner (pp. 58, 59, 62, 63, 72, 73, 84, 85), and this is understood to be the sole ground on which these claims are sought to be sustained, the theory of the claimants being that the vessel was to be regarded as part of the territory of France, and that an action for loss of life caused by the negligence or fault of the *Bourgogne* or her officers would lie in France against the petitioner, her owner, although the ship at the time was on the high seas. It is obvious that this is the only possible foundation for these claims, because it is well settled that at common law no such right of action survives and by the general maritime law as recognized in the United States no action will lie for negligence resulting in loss of life.

The "Harrisburg," 119 U. S., 190.

And there was no other law in force at the place of the collision except the general maritime law and

the law of France, so far as that law was applicable to a French ship on the high seas.

The same reasons hereinbefore urged under the *First Point* are applicable to this *Point*. These life claimants cannot recover because, as shown under the *First Point*, by the law of France the vessel was not at fault. She was proceeding at a moderate speed within the limit of the rule held by the French courts to be applicable to vessels of France.

This was decided by the Court of Appeal of Paris affirming in this respect the Court below in the case of *Rosal* against the petitioner here inbefore referred to, the suit being brought by the widow of one of the persons lost on the *Bourgogne* in this collision, and it was held that the ship was proceeding at a moderate rate of speed within the meaning of the international regulation as interpreted in France; and on the grounds heretofore urged in respect to the question what law governed at the place of collision the claimants are bound by the French law which they thus invoke on their own behalf. They cannot take a part of that law—the part which gives them a right of action—and claim to repudiate or reject that part of the law which defines, restricts and determines the right which is the basis of their suits There was therefore no error by which any of the claimants were prejudiced by the decision of Judge Townsend that they should not be permitted to present their claims for adjudication and adjustment before the Commissioner.

It is true that Judge Townsend in his opinion denied their right so to procecute their claim before the Commissioner on the authority of *Rundell v. La Compagnie Générale Transatlantique* (94 F. R., 366; affirmed 100 F. R., 655), on the ground that

by that case it was held that there could be no recovery under the general maritime law for damages for negligence resulting in death on the high seas (Record, p. 1263).

It is immaterial whether this ruling of Judge Townsend was correct or not if these claimants could not under the French law and in a French court have maintained actions for loss of life.

The case cited by Judge Townsend was commenced in the District Court of the United States for the Northern District of Illinois in Admiralty. It was brought by the administrator of a person whose life was lost by the collision between the *Bourgogne* and the *Cromartyshire,* and it was held therein that a Court of Admiralty of the United States would not enforce the maritime law of a foreign nation even if the law of France gave a right of action for death caused by a tort on a French vessel on the high seas. On appeal to the Circuit Court of Appeals for the Seventh Circuit this decision was affirmed and it was held that a Court of Admiralty of the United States could not enforce the local law of a foreign nation giving a remedy in tort for causing death by negligence, even if in terms it applies to the case upon the ground that the alleged cause of action arose upon a vessel of that nation, but that such cases must be adjudged by the general maritime law as understood and administered by our courts.

It was claimed in the courts below in this case that not only the Admiralty courts of the United States but courts of the United States or of the States exercising a general common law jurisdiction could and would enforce a cause of action given for a tort committed in French territory, and that as the ship was for certain purposes a part of the

territory of France, a tort committed upon a French ship would, in respect to such cause of action, be considered committed upon French territory; that the cause of action thus accruing under the laws of France was in the nature of a transitory action which could be enforced in any court of general jurisdiction where the defendant could be found and served.

It is evident that the suits brought in this country against the petitioner are prosecuted upon this theory and the claimants rely upon a series of decisions which establish the rule sanctioned by this Court, that a cause of action for damages for negligence resulting in death accruing under the laws of one of the States of the Union can be enforced in the Courts of other States or in the federal courts sitting in other States where there is nothing in the public policy of the State in which the action is sought to be enforced contrary thereto, and no statute forbidding the same, and they rely especially upon the following decisions of this court as establishing this principle:

Dennick v. R. R. Co., 103 U. S., 11.

Stewart v. Baltimore & Ohio R. R. Co., 168 U. S., 445.

Texas & Pacific R R. Co. v. *Cox*, 145 U. S., 593.

Northern Pacific R. R. Co. v. *Babcock*, 154 U. S., 190.

and various decisions of the Circuit Courts of Appeal to a similar effect.

But whether the same principle would apply in regard to the enforcement of a cause of action sounding in tort accruing under the law of France and sought to be enforced in the State or Federal

Courts of this country is not determined by this course of decisions.

The grounds on which the courts of one State enforce causes of action of this nature accruing in another State is the comity of States.

In *Huntington v. Attrill,* 146 U. S., 657 at p. 669, this Court thus states the general principle:

> "Laws have no force of themselves beyond "the jurisdiction of the State which enacts "them, and can have extra territorial effect "only by the comity of other States."
>
> Huntington v. Attrill, 146 U. S., 657, at p 669.

As between the States of this Union under a common constitution the principle of comity has its fullest development, but as between independent nations the question of comity is largely a question of reciprocity. While the courts of one country may recognize and enforce rights acquired under the laws of another country they are not strictly bound to do so.

Hilton v. Guyot, 159 U. S., p. 210.

The principle of comity even as practised between the States of the Union does not absolutely require the enforcement in the courts of one State of all causes of action accruing under the laws of other States The right to maintain an action in another State is always conditioned upon there being nothing in the laws of such State which makes the maintenance of the action against the public policy of that State or in violation of its statutes. There is a statute in the State of New York, for instance, which forbids the courts of

that State to entertain jurisdiction of actions by a non-resident against foreign corporations, except in cases specified in the statute (New York Code of Civil Procedure, §1780).

The Circuit Court of Appeals reversed the decision of the District Court in this case with regard to the proof of damages for loss of life on the ground that "the claims for damage by reason of "loss of life could have been maintained in the "French Courts against the fund paid in on limita-"tion of liability" (Record, p. 2267). No authority is cited for this statement.

There is no authoritative decision of this Court which holds that the principle of the foregoing cases allowing recovery in one State on a cause of action for damage caused by loss of life through negligence in another State would apply to the enforcement of a cause of action of this nature or for tort generally acquired under the law of France.

But whatever doubt there may be in respect to the enforcement of a liability under the French law in any Court, State or Federal, common law or admiralty, in this country, there is no doubt that the nature, extent and conditions of the liability wherever enforceable, must be determined by the law of France and not by the law of the country in which the liability is sought to be enforced.

The rule, as stated in the case of *Herrick* v. *Minneapolis & St. Louis Ry. Co.*, 31 Minnesota, 11, and approved by this Court in *Northern Pacific R. R.* v. *Babcock*, 154 U. S., 190, at p. 197, is that,

> "In such cases the law of the place where "the right was acquired, or the liability was "incurred, will govern as to the right of ac-"tion; while all that pertains merely to the

"remedy will be controlled by the law of the "state where the action is brought."

Northern Pacific R. R. v. Babcock, 154 U. S., 190, at p. 197.

So where the terms of the statute made it a condition of recovery that an action should be brought within a certain time this condition was held to be so far of the substance of the right that where an action was brought in another state the condition must be complied with.

The Harrisburg 119 U. S., 199, 214.

Further citations however in support of this proposition are unnecessary since the very full and explicit enunciation of the doctrine by this Court in the case of *Slater* v. *Mexican National R. R. Co.*, 194 U. S., 120, at p. 126. That was the case of a personal representative of an employee of the Mexican National R. R. Co. to enforce a liability for damages for his death by defendant's negligence created under the law of Mexico, and the Court says:

"But when such a liability is enforced in "a jurisdiction foreign to the place of the "wrongful act, obviously that does not mean "that the act in any degree is subject to the "*lex fori*, with regard to either its quality or "its consequences. On the other hand it "equally little means that the law of the place "of the act is operative outside its own terri- "tory. The theory of the foreign suit is that "although the act complained of was subject "to no law having force in the forum, it "gave rise to an obligation, an *obligatio*, "which, like other obligations, follows the "person, and may be enforced wherever the "person may be found. Stout v. Wood, 1

"Blackf. (Ind.) 71; Dennick v. Railroad Co., "103 U. S., 11, 18. But as the only source "of this obligation is the law of the place of "the act, it follows that that law determines "not merely the existence of the obligation, "Smith v. Condry, 1 How., 28, but equally "determines its extent. It seems to us un- "just to allow a plaintiff to come here abso- "lutely depending on the foreign law for the "foundation of his case, and yet to deny the "defendant the benefit of whatever limitations "on his liability that law would impose. In "Northern Pacific R. R. v. Babcock, 154 U. "S., 190, 199, an action was brought in the "District of Minnesota for a death caused in "Montana, and it was held that the damages "were to be assessed in accordance with the "Montana Statute. Therefore we may lay on "one side as quite inadmissible the notion "that the law of the place of the act may be "resorted to so far as to show that the act "was a tort, and then may be abandoned, "leaving the consequences to be determined "according to the accident of the place where "the defendant may happen to be caught."

Slater vs. National R. R. Co., 194 U. S., 120, at p. 126.

Therefore whatever action could be maintained in any court in this country to enforce this law of France, a plaintiff could not recover unless by the law of France he could recover in a French court, and whether this Court shall accept the fact found in regard to the speed of the *Bourgogne* as determined in this proceeding by both the courts below as ten knots or thereabouts, or shall find that fact in accordance with the conclusion of the French Courts, in the case of Resal against this petitioner, as twelve knots (Record,

pp. 1238, 1240, 1225), or, upon a reexamination of the evidence, shall determine the speed of the steamer, conformably to the proofs, the necessary conclusion upon the record is that these claimants could not recover in France, because no violation of the international rule, as interpreted by the French Courts, is shown and such violation is beyond question one of the conditions of liability which the French law would impose.

The case of *Slater* v. *The Mexican National R. R. Co., supra,* does not determine that the rule of comity is the same between independent nations, or France and this country as it is between the States of this Union. The question was not raised, and if raised would be probably controlled in that case by the fact that the plaintiff was a citizen of Texas and the defendant a corporation of Colorado, although owning and operating a railroad in Mexico (see Opinion in that case, page 131).

It is obviously unnecessary in this case to determine whether any particular court, state or national, of common law or admiralty can or should entertain such an action to enforce a cause of action accruing in France under such a law. The record is bare of any evidence as to whether a French court would in the like case enforce a similar right or cause of action accruing under an American statute, and we have found no decisive French authority on that question. A determination of that question requires a critical examination of the French law and practice in this respect, which is aside from any question here involved. The precise question is whether *by force of the French law alone* for that law must govern wherever enforcable, these claimants should be

allowed to participate in the fund and by that law as applied by the French Courts to the very state of facts here proven the claimants have no cause of action.

The only direct or legal interest of the petitioner in this question, which relates only to the distribution of the fund, is, that it is entitled to any possible surplus of that fund after satisfying all legitimate claims against it. It was on this ground and in this right that the petitioner appeared before the Commissioner and contested the claims that were litigated there. This the petitioner had a right to do, not because the questions so contested involve any of the issues raised upon the petition and the answers to it, or bear upon the question whether it was entitled to its limitation of liability, but because the petitioner being entitled to any surplus that might remain after satisfying all other claims on the fund was a possible distributee of the fund and like any other party having an interest in the fund as a possible distributee was necessarily entitled to contest the right of participation of any other party claiming to be entitled to participate therein. Considering the very large amounts which it is claimed should be paid into court as pending freight and the serious doubts that are raised by the petitioner against the claims of the various claimants for participation in the fund including these life claimants this right to the surplus is something more than a mere theoretical or technical right.

This interest in the surplus certainly justifies the petitioner in questioning the right of any claimant, or any class of claimants, and in con-

testing the *amount* of the several claims, and it justifies the presentation to the Court of the question whether this large class of claimants is entitled to share in the fund.

FIFTH POINT.

The District Court and the Circuit Court of Appeals erred in holding invalid the limitations of liability in the passage tickets and in making awards of damages to the various claimants.

a. The limitation of value contained in the passage ticket, Petitioner's Exhibit 36 (Record, p. 1317) is reasonable and valid in law.

Exceptions "Thirty-first to Fortieth." Record, p. 1320.

b. The provision in said Exhibit, requiring passengers to deposit their valuables with the purser of the steamer, is reasonable.

Exception Forty-first." Record, p. 1321.

c. Under the provisions of the Harter Act all the claims should have been disallowed.

Exception "Thirty-first." Record, p. 1320.

d. Section 4281 R. S., applies to all the claimants to whom awards of damages were made herein, and no awards of damages should have been made to them for loss of money, gold, etc,

Exception "Forty-second." Record. p. 1321.

a. The limitation of value contained in the ticket of passage. "Petitioner's Exhibit 36," is reasonable and valid in law.

The Circuit Court of Appeals has decided in this case that the freight and passage money paid by the passengers and shippers in advance under the agreement contained in the passage tickets and bills of lading belongs to the Company, and is freight earned for the voyage.

That a carrier and a passenger or shipper of freight may enter into a contract to limit the amount of the liability of the carrier for any loss incurred, with reference to the value of the thing carried, is no longer open to question.

Railroad Co. against Fraloff, 100 U. S., 24, 27.

Hart vs. Railroad Company, 112 U. S., 331.

And the conditions in such ticket are part of the contract of carriage, and they are binding upon the claimants if they are reasonable. The carrier has a right to protect itself against liability as an insurer for baggage exceeding a fixed amount in value, except upon payment to it of an additional compensation proportionate to the risk.

Railroad Co. vs Fraloff, 100 U. S., 24, at 27.

It is hardy open to discussion that the conditions contained in the ticket of passage are binding on the claimants, whether they read them or not. This was decided in the case of *The Kensington*, 88 Fed. Rep., p. 334, where the Court said:

"The libellants are chargeable with notice of this provision, whether they read the contract or not."

The Kensington, 88 Fed. Rep., p. 334.

This was affirmed by the Circuit Court of Appeals, and although this Court reversed the decision of the Circuit Court of Appeals in that case, *it did not reverse either the District Court or the Circuit Court of Appeals on that point.*

The parties having, therefore, entered into a contract which is binding upon them, provided the terms of the contract are reasonable, we come to an examination of the tickets of passage, the provisions of which, in this case, limit the liability of the petitioner to the sum of One hundred dollars for first class passengers, and Sixty dollars for second class passengers, and Thirty dollars for third class, for their respective losses of baggage. (Bocande, p. 1021, fol. 3047).

The contract of passage will be found in the record, at folios 3635-3642, pages 217-219.

The ticket provides:

> "III. Baggage and valuables may be insured at the current rate, on the company's open policy." (Record, p. 1218).
>
> "IV. The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for money, species, securities, jewels and articles of value, unless they have been declared and taxed as valuables and deposited with the Purser against a receipt delivered by him. (Record, p. 1218).
>
> "V. In case of damage to or total loss of baggage, for which the Company or the Captain may be responsible, the liability is not

> to exceed 100 dollars in first class, and 60 dollars in second class, regardless of the number of pieces or their contents, *as the passengers should have their baggage insured for its full value on the Company's* open policy." (Record, p. 1218).

This Court has heretofore held, in the case of *The Kensington*, 183 U. S., p. 263, that limitation by the carrier from liability for loss or damage to baggage to the sum of $50. would be a reasonable limitation, if the right to fix a larger sum was not encumbered with illegal and arbitrary conditions.

The Kensington, 183 U. S., 263, p. 276-7.

And in the case of *The Majestic*, 166 U. S., at p. 375, this Court held that the limitation of Fifty dollars was a reasonable one, because of the right given to the passenger to increase the amount of the liability of the carrier by paying the carrier a further reasonable compensation.

The Majestic, 166, U. S., at p. 375.

It is true that this Court in the two cases cited last, did not sustain the validity of the passage tickets, but in the case of *The Kensington*, this Court held that the limitation was coupled with very unreasonable conditions, which in fact left the passenger without a right to a compensation greater than the amount limited by the ticket; and in the case of *The Majestic*, the validity of the ticket was denied because this Court held that the conditions on the ticket, were not part of the con-

tract of passage, being separated from the ticket proper.

In this case the contract of passage is not in any way separated, but is entirely visible at a glance. In large letters, at the head of the ticket, is printed: "CONDITIONS OF PASSAGE," and the conditions follow immediately thereafter, and at the end of the conditions, and as the last condition binding upon the passenger appears: "*On taking his or her ticket the passenger agrees to and accepts all the foregoing conditions.*"

In this case the conditions of limitation relied upon are included in the contract proper, and appear on the face of the ticket.

For convenience, we quote the stipulations of the ticket of passage in *The Kensington* case, and the stipulation contained in the ticket of passage of the petitioner herein, side by side:—

THE STIPULATION IN THE KENSINGTON CASE IS AS FOLLOWS:

"(d) The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid for in advance on the excess value at the rate of one per cent ,or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading in use from the port of departure."

THE STIPULATIONS IN THE CASE AT BAR ARE AS FOLLOWS:

"III. Baggage and valuables may be insured on the Company's open policy.

IV. The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for money, specie, securities, jewels and articles of value, unless they have been declared and taxed as valuables and deposited with the Purser against a receipt delivered by him.

V. In case of damage or total loss of baggage, for which the Company or the Captain may be responsible, the liability is not to exceed 100 dollars in 1st class and 60 dollars in 2nd class, regardless of the number of pieces or their contents, as the passengers should have their baggage insured for its full value on the Company's open policy."

The conditions contained in the ticket of passage in this case are essentially different from the conditions of the ticket in the case of the *Kensington*, *supra*, for they do give the passenger a reasonable

opportunity to protect himself. The ticket first provides that a passenger may, at his own option, insure his baggage for its full value on the Company's open policy, and it then provides that the Company shall not be liable for a greater amount than the sum of One hundred dollars in first-class, Sixty dollars in second-class, and $30 in third-class, *unless the passengers shall "have their baggage insured for its full value on the Company's open policy."*

The petitioner herein does not attempt to deny liability, but on the contrary admits liability for a certain sum and gives the passenger an opportunity to increase that liability to the full value of his baggage, if he himself sees fit.

The petitioner does not attempt by the terms of its ticket to fix a rate of insurance, and does not compel the passenger to accept the rate of insurance which the Company shall fix, either per foot, per kilo, or a fixed percentage on the value of the goods insured, but it permits the passenger to insure his baggage for its full value *at the current rate of insurance.*

Obviously, nothing can be more reasonable and fair than the current rate, the generally accepted rate. Presumptively, if not conclusively, that rate is reasonable.

We submit that the petitioner, in furnishing to the passenger a contract such as was furnished in this case, brought itself well within the rule announced by this Court in the cases of the *Majestic* and the *Kensington, supra,* and that it did submit to the passenger a good and valid ticket, thoroughly protecting the passenger against loss, if he desired to comply with its terms, and that the terms

with which he was asked to comply were in every sense fair and reasonable.

The District Court erred, therefore, in awarding to any of the claimants herein, as damages, any sum whatever, in excess of the amounts stipulated by them in the ticket of passage accepted and used by them.

The decree of the District Court affirmed by the Circuit Court of Appeals, awarded to the followng claimants, as damages for lost baggage and personal effects, the following amounts:

Henry Knowles, as administrator of the Estate of Gertrude Lalla Rook Knowles, deceased	$2,000.00
W. C. Perry, administrator of Kate M. Perry, For personal effects....	4,277.50
Enrico Cirri, For personal effects,..	768.00
Louis Del Ponti, For personal effects.	182.00
Pauline Henuy, as administrator of Juliette Cicot, For loss of personal effects	1,218.00
John Perry, next of kin of Katherine and Albert Perry, for loss of personal effects	800.00
W. C. Perry, administrator of Sadie Perry, For divers trunks, boxes, jewelry and other personal effects.	1,200.00
W. C Perry, administrator of Florence Perry, for loss of personal property	1,000.00
George Deslions, for loss of personal property	25,000.00

Referring to the award of $25,000 damages to George Deslions, concerning which the Circuit

Court of Appeals disagreed, as appears by the dissenting opinion of Judge Wallace, we discuss that award in the Sixth Point of this brief.

The Circuit Court of Appeals in its opinion in this case stated that from their view of the testimony with respect to the ticket of passage, Petitioner's Exhibit 36, it does not satisfactorily appear that the ticket of passage in force at the time of the disaster herein was identical in form and contents with Exhibit 36. And that Court has reached that decision in reliance upon the imperfect memory of one of the counsel for the claimants as against the positive testimony of Mr. Bocande, who was the General Agent of the petitioner at the Port of New York at the time of the disaster.

Both the Commissioner and the Circuit Court of Appeals have overlooked the fact that that Exhibit was introduced in evidence, without objection, on the trial of this case before Judge Townsend . And having been received in evidence, it was competent evidence before the Commissioner, without further proof.

This exhibit was produced at the request of the counsel for the claimant (Record, p. 1020, fols. 3043, *et seq.*, p. 1089, fol. 3251), and both Mr. Benedict and Mr. Murray questioned Mr. Bocande in regard to the form and contents of the ticket.

It also is obvious that the Circuit Court of Appeals did not give proper weight to the fact that when the contract was produced by the petitioner the counsel for the claimant without objection accepted the testimony of Mr. de Bocande as to one of its stipulations, as appears by the following:

> "By Mr. Benedict: Q. Have you brought with you the form of the passage ticket of the French Line? A. Yes, sir. I produce it.

Q. Is this the form that was in use at the time of the disaster to the *Bourgogne?* A. This is the shape of the ticket.

Q. Is it the form in the letters? A. The same exactly I think.

By Mr. Jones: Q. You don't mean to say that there have not been changes? A I don't know.

By Mr. Benedict: Q. Will you read the first clause of that ticket? A. (Reading): 'Passage money is to be paid in full before the departure of the steamer and at all events belongs to the company.'

Q. Do you remember whether that clause which you have read was in the tickets in use at the time when the *Bourgogne* was lost? A. I suppose it was the same."

Record, p. 1089, fols. 3252, *et seq*

It is obvious that the object of proving the stipulation quoted was to show a contract between the petitioner and the passenger whereby the passage money belonged to the Company, and, therefore, should have been surrendered to the trustee in this proceeding as part of the freight money

It is also obvious that the Circuit Court of Appeals did not give proper weight to the fact that none of Mr. Bocande's testimony was objected to, nor was the exhibit objected to when offered in evidence.

Record, p. 1020, fol. 3045.

The petitioner's witness, de Bocande, testified that he was the General Agent of the petitioner since November, 1897, which was eight months before the collision, and that he had been connected with the Company since 1879 in various capacities, such as Assistant and Chief of a Bureau, an Inspector, Assistant Commercial Manager and Commer-

cial Manager; that he was familiar with all branches of the service and that as Assistant Chief and Chief of the Commercial Service the different branches came under his observation, and that he had work to do with all the departments

de Bocande, pp. 991-992.

The testimony of the witness de Bocande is positive as to the form of the ticket He is asked by Mr. Benedict, the claimant's counsel, the following:

> By Mr Benedict: Q Have you brought with you one of the passage tickets of the French Line? A Yes, sir, I produce it.
>
> Q. Is this the form that was in use at the time of the disaster to the *Bourgogne*? A. This is the shape of the ticket?
>
> Record, p. 1089, fol. 3252.

By Mr. Murray, claimant's counsel, he is asked:

> Q. Did all of the three different shades of tickets have all of the stipulations printed on the face of them? A. They have all the same except for baggage indemnity; the amount of indemnity for baggage varies with the price paid for the passenger, first, second and third. I think it is $100.00 for first class and $60.00 for second and $30.00 for third class. All the other clauses are the same to my knowledge.
>
> Q. Did all the tickets have the stipulation printed on the face of the ticket? A. This way to my knowledge.
>
> By the Petitioner's Counsel: Q. That is you mean all the tickets sold here in New York for Havre? A. Yes.
>
> Record, p. 1021, fol. 3047.

At this stage the claimant's counsel, Mr. Murray, took the stand. He made a statement. On cross-

examination in answer to the very first question he is asked he says he does not recall the class of the ticket, although he made a copy which was in French; that he lost this copy but how he does not say. He is asked if it was in French, and he says, after making the positive statement that he made a copy of the ticket in French, "I am not sure whether it was in French, or whatever one that another person showed me was in French."

He was then asked:

> Q. Are you willing to swear of your own knowledge and with positive recolletcion that that ticket that you have just described in the hands of that lady was a ticket from New York to Havre? A. No, sir; I am willing to swear that the ticket that I saw in the office of the company in Bowling Green was as I have stated.
>
> Q. How have you stated that? A. I say the stipulations were on the back of the ticket.
>
> Q. How did the ticket purport to be, from Havre to New York or New York to Havre? A. I am not able to say.
>
> Record, p. 1023, fol. 3052.

Pressed on cross-examination to swear positively as to whether the ticket was in French or English, he falls back on that dubious answer, "my best recollection is that it was in English, that is the best I can say."

When asked if he was willing to swear that this ticket was printed in English he answered, "I think it was."

Record, p. 1023, fol. 3052.
Record, p. 1025, fol. 3058.

Then he is examined on re-direct, and with the

usual result, he suddenly becomes positive that it was in English.

Record, p. 1023, fol. 3054.
Record, p. 1025, fol. 3059.

On recross-examination his whole chain of thought changes as to the ticket shown him by the lady. He then says it was in French, but he did not know whether it was from New York to Havre or not; but he should think it was because she bought her ticket in New York. And he then denies that he said she bought her ticket in New York.

Record, pp. 1025, 1026, fol. 3060, *et seq.*

Mr. de Bocande is then recalled and he testifies that the tickets from Havre to New York are in French and that they are sold in New York as re turn tickets.

Record, p. 1026, fol. 3063, *et seq.*

So that if Mr. Murray's first statement, that the ticket he saw was in French, is correct, it was a ticket from Havre to New York. Mr. de Bocande testified about the form of the ticket between New York and Havre, which is obviously a different matter Mr. de Bocande is not contradicted by Mr. Murray in any way.

Mr. Murray's testimony is hopelessly contradictory, and it is apparent that he did not know what he was talking about. The copy of the ticket which he says he made was lost, his memory was at fault, and he was vainly struggling to recall what actually happened.

On the other hand, considering that Mr. de Bocande was connected with the petitioner since the

year 1879, in various capacities, including that of General Agent of the Company at the Port of New York at the time of, and previous to, the accident to *La Bourgogne*, Mr. de Bocande was in the position to know what he was talking about. His testimony is positive as to the form of the ticket and the limitations as to the liability of the Company in case of loss of personal effects.

It seems to us that there can be no question that the form of the contract of passage is not repugnant to the decisions in the cases of the *Majestic* and the *Kensington*, and that the stipulation therein as to liability, accompanied by the right to the passenger to increase the amount by insuring his or her baggage on the Company's open policy, or depositing valuables with the purser of the ship, are reasonable and, therefore, valid.

b. The provisions in the ticket of passage, "Petitioner's Exhibit 36," requiring passengers to deposit their valuables with the purser of the ship is reasonable.

Exception "Forty-first," p. 1321.

The provision in "Petitioner's Exhibit 36," requiring passengers to deposit their valuables with the purser, is as follows:

> "IV. The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for money, specie, securities, jewels and articles of value, unless they have been declared and taxed as valuables and deposited with the purser against a receipt delivered by him."
>
> Record, p. 1217.

The right of a passenger to so contract with the carrier has already been discussed in sub-division "a" of this point, at p. 35 of this brief.

Ernest Scol, the assistant purser on board the "*Bourgogne*" at the time of the disaster, was called as a witness for the petitioner and testified that none of the passengers had deposited any money or other valuables with the purser of the "*Bourgogne*" on the voyage which ended in this disaster.

Scol, Record, pp. 1791, 1792.

The question of the reasonableness of a provision of this character in a ticket of passage issued by a steamship company to a passenger was fully discussed by Earle, C. J., in *Wilton against the Atlantic R. M. S. Co.*, 10 C. B. n. s. 452, and it was there held that the provision was reasonable, and that the passenger could not recover, even though the stranding of the ship was owing to the master's negligence. It was there said:

> "This condition consists of three parts. The first is, 'the ship will not be accountable for luggage, goods, or other description of property, unless bills of lading have been signed therefor.' The meaning of these words is plain,—the purpose also is plain—to have some security against the fabrication of exaggerated claims. If this part is taken by itself, it is decisive against the plaintiff. He claims to make the ship accountable for lug gage, though he had taken no bill of lading.
>
> But the contention of the plaintiff was, to read the first part above set out with the second, viz., 'each first and second class passenger allowed to have twenty cubic feet of luggage free;' and to construe the second part as

an exception out of the first, so that it should read, that the ship will not be accountable unless a bill of lading is taken, for any luggage beyond twenty cubic feet, which the passenger may carry free of any charge, and also free from any condition requiring a bill of lading.

We, however, are of opinion that this is not the true construction of the words. The stipulation for a bill of lading as a condition for being accountable is absolute; the stipulation for twenty cubic feet of luggage free is unconnected therewith, being an exemption from charge so far and no farther, *leaving the passenger to get a bill of lading for all for which he intends to make the ship accountable, and at the same time giving him the opinion of taking luggage under his personal control without a bill of lading, but, in that case, carried at his own risk.* In many cases the value may be small, and the convenience of personal control without any restriction may be great."

Wilton v. Atlantic R. M. S. Co. 10 C. B., n. s. 452, at p. 467.

We respectfully submit that this provision of the ticket of passage in this case is in every sense reasonable, and that the awards to the respective claimants for money, jewelry and other valuables, other than clothing, should be disallowed.

c. Under the provisions of the Harter Act all the claims should have been disallowed. . .

Exception "Thirty-first." Record, p. 1320.

We think that the word "property" in the 2nd section of the Act includes baggage, and that, *therefore, the Act applies. We base that claim upon* Section 7 of the Act, in which it is stated that Sec-

tions 1 and 4 shall not apply to transportion of live animals. If Congress intended that the word "property" did not include baggage an exception would also have been made.

We are aware that the Circuit Court of Appeals in the case of *The Kensington*, affirming the District Court, held that the Harter Act did not apply to baggage, but we think after a careful reading of the case of *The Kensington*, as decided by the Supreme Court, that it is still an open question as to whether or not the Harter Act applies to baggage.

The Kensington, 183 U. S., 263, at p. 267.

This Court having excluded the claim of the S. S. White Dental Company on the ground that the vessel was seaworthy, should exclude the other claims under the provisions of the Harter Act.

d. Section 4281 R. S. applies to all the claimants herein, and no awards of damages should have been made to them for loss of money, gold, etc.

Exception "Forty-second," p. 1321.

Section 4281 of the Revised Statutes of the United States provides as follows.

> "If any shipper of platina, gold, gold dust, silver, bullion or other precious metals, coins, jewelry, bills of any bank or public body, diamonds or other precious stones, or any gold or silver in a manufactured or unmanufactured state, watches, clocks or timepieces of any description, trinkets, orders,

notes, or securities for payment of money, stamps, maps, writings, totle-deeds, printings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with any other material, furs, or lace, or any of them, contained in any parcel, or package or trunk, shall lade the same as freight or baggage, on any vessel, without at the time of such lading, giving to the master, clerk, agent, or owner of such vessel receiving the same a written notice of the true character and value thereof, and having the same entered on a bill of lading therefor, the master and owner of such vessel shall not be liable as carriers thereof in any form or manner; nor shall any such master or owner be liable for any such goods beyond the value and according to the character thereof so notified and entered."

U. S. Revised Statutes, Sec. 4281.

It seems to us that this section of the Revised Statutes disposes of all claims for loss of articles with the exception of clothing and wearing apparel in which there is no silk, furs or lace.

The Circuit Court of Appeals dismissed this contention by reference to a quotation from the case of *Wheeler against the Occanic Steam Navigation Company*, 125 N. Y., 155, at p. 161, where it was held that while the liability of the Steamship Company, as a common carrier of goods for hire, was removed by this section, nevertheless the lesser liability of a bailee remained unaffected.

We insist that this contention of the Circuit Court of Appeals is erroneous. The true effect of the statute is that the ship is not under a carrier's liability as an insurer, nor is it otherwise liable for

loss or damage to valuables which the passenger may retain control and possession of, unless the passenger shall declare the nature and value of the articles as contemplated by the statute. The Circuit Court of Appeals seems to have overlooked the wording of the statute that if the passenger "*shall lade the same as freight or baggage,*" without at the time giving the notice to the master required by the section, "the master and owner shall not be liable as carriers thereof in *any form or manner.*" The claimants in this case have recovered damages against the petitioner on the ground that the goods lost were "baggage." So that by the very terms of the award to them they have been brought in under the provisions of this section.

This provision seems to have been based upon the statute 26 Geo. III (1786) C. 86. S. 3. P. 819.

See 2 Parsons Sh. & ADM. 123.

Some changes were made in the form, but not in the substance, when it was incorporated in the Merchants Shipping Act of 1854, as Section D3, 17 & 18 Vict. C. 104, p. 746; and was again altered in form in what is known as The Merchants Shipping Act of 1894, in which it appears as Section 502.

It provides as follows:

> "The owner of a British sea-going ship or any share therein, shall not be liable to make good to any extent whatever any loss or damage, happening without his actual fault or privity, in the following cases, namely:
>
> * * * * * *
>
> (2) Where any gold, silver, diamonds, watches, jewels, or precious stones, taken in or put on board his ship, the true nature and

value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading, or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making way with, or secreted thereof."

57 58 Vict. C. 60;

Scrutton's Merchants Shipping Act, 1894, p. 392.

This provision of the English Statutes has been held to apply to and relieve the carrier from all liability for jewelry, script, documents, promissory notes, etc., taken on board a vessel by a passenger and retained by him in his stateroom.

Acton v. Castle Mail Co., 1895, 73 L. T. R., 158.

Mr. Justice Bradley, in *Norwich Company* against *Wright*, 13 Wall, 104, 120, after reviewing the legislation prior to our limitation of liability act of 1851, said:

"The Act of Congress seems to have been drawn with direct reference to all these previous laws, and with them before us, its language seems to be not difficult of construction. The first section exempts ship owners from loss or damage by fire to goods on board the ship, unless caused by their own neglect.

"The second (now §4281 R. S.) exempts the owners and masters from liability for loss or damage to jewelry, precious metals, or money put on board the ship, unless its character and value be disclosed in writing. These two provisions are substantially contained in the English law of 1786."

Judge Bradley's construction of this statute is exactly in line with the English Courts' construction of the English statute. Indeed, Judge Bradley uses the expression "put on board ship," thus following the language of the English statute.

To follow the decision in the case of *Wheeler against the Steamship Company*, cited by the Circuit Court of Appeals, would be to nullify the force and effect of the statute. If the carrier is relieved from liability only as a carrier, still remaining liable as a bailee, then the statute is of no benefit to him in the particular instance which it was undoubtedly intended to cover. It is far more logical to hold the carrier liable for the value of the goods shipped, when they have come into the possession of the carrier or its agents, and a bill of lading has been issued therefor, then to deny to the carrier the benefit of Section 4281, and to hold him liable for goods of this character, which he never knew were on board his ship, and which he could not know about unless the passenger informed him of it. To put this construction on Section 4281 is to open the door to fraud, and to permit claimants to come in and fabricate claims of great value against the carrier. Such a construction overlooks the very language of the statute when it refers to "freight or baggage."

The English Courts have so construed their statute, and our statute, as pointed out by Justice Bradley, in *Norwich Company against Wright, supra*, is almost identical This Court, in a very recent case, has said: "It is desirable, if there eb recent case, has said: "It is desirable, if there be

no injustice, that the maritime law of this country, and of England, should agree."

The Eliza Lines, 199 U. S., p. 119, at p. 128.

It is respectfully submitted that Section 4281 applies to a case where personal effects have been taken on board a vessel, and kept in possession of the passenger, without notification to the carrier.

The awards to the various claimants herein, for money, jewelry, etc., should be reversed.

The direct interest of the petitioner in this and the subsequent point is that it is entitled to the surplus, if any, in the fund, and for reasons stated under the last preceding point that is a real and not a mere technical interest.

Moreover, as there has been an adjudication of amounts due the several claimants under this and the subsequent point—the petitioner may be bound thereby in any actions that may be brought to recover the same in case this proceeding should for any reason fail.

SIXTH POINT.

The Circuit Court of Appeals erred in affirming the award of damages in the sum of Twenty-five thousand dollars to the claimant, George Deslions.

This claimant filed a claim for loss of a quantity of personal property worth upwards of Fifty thousand dollars (Record, p. 44).

The Comissioner allowed claimant Twenty-five thousand dollars for loss of property (Record, p. 1299). Exceptions were duly taken to this award. (See Exceptions 9 to 28, inclusive, 31, 43, 44 and 45, Record, pp. 1320, 1321).

The Commissioner found that the values testified to by this claimant were somewhat exaggerated. (Commissioner's Report, p. 1301, fol. 3886).

The Circuit Court of Appeals, in its opinion affirming this award to Deslions, had this to say of the claimant and of his testimony in the case:

> "It must be admitted that Deslions does not appear well on paper; he is involved in numerous contradictions and divigations; professing ignorance of matters which should be within his knowledge and failing to remember facts which it seems incredible he should have forgotten. Indeed, portions of his testimony evince such recklessness and are so obviously prejudicial to the success of his claim that it seems as if his conduct must be attributable to other causes than those suggested by the petl-

tioner—possibly to an excitable French tem perament or to ignorance of our methods of procedure. Many of his lapses of memory and flippant answers were given when being interrogated regarding matters so clearly collateral that he could have answered fully and truthfully without in the least endangering his claim. His failure to do so seems hardly compatible with a deep laid scheme of perjury. *May it not rather be attributable to some form of mental aberration not easy to characterize from a mere perusal of the printed record.*"

Judge Wallace, in his dissenting opinion, criticises the claimant in unmeasured terms.

"I cannot take the charitable view of Deslions' testimony which seems to prevail with the majority of the Court. His testimony is so full of falsifications that it is utterly unworthy of credit. It is apparent throughout that he has been influenced by the motive of withholding any information which might afafford an opportunnty to the steamship company to expose the fraudulent and extravagant character of his claim. Rejecting his testimony, there is no competent evidence of the value of the property lost. The testimony of the other witnesses does establish that some time prior to the shipment he had a collection of curios in his possession, and it may form a basis for estimating the value of some part of them. It also shows that he packed some of his curios for shipment. What these were does not appear, nor does their value appear. He shipped a certain number of trunks, and the weight appears, but what was in the trunks and the value of the contents cannot be ascertained except by his testimony. He has chosen for his own purposes to destroy the value of that testimony, and ought not to be allowed a recov-

> ery from sympathy. The case is not one in which the Court should be controlled by the finding of the Commissioner. *When a witness discredits himself twentw times over by his prevarications, and there is not any other competent evidence of the amount of his claim, the finding of the Commissioner allowing just half of it is purely speculative, and ought not to hanv and inflence with the reviewing Court.*
> (The italics are ours).

Judge Wallace might have gone still further, and said that Deslions had testified falsely, not only in twenty instances, but in a hundred instances.

If the charitable view of this claimant, taken by the majority of the Court of Appeals, is the correct rule in cases of this character, then no common carrier may be protected from false and exaggerated claims against it, because the person prosecuting such a claim may withhold all information which may be of assistance to the carrier to investigate the same, may testify falsely as to the amount of the claim which he may have, and then fall back on the statement that he was suffering from "lapse of memory," or "some form of mental aberration."

If Deslions, when giving his testimony with regard to this claim, was suffering from a form of mental aberration, and has not been guilty of perjury in any one of the scores of instances in the record, then we submit that claimant should not be mulcted in damages based upon testimony given when he was not mentally competent.

1.

The Commissioner having found that the claimant did not make the contract set forth in his sworn statement of claim should have dismissed the claim.

The Commissioner found that "the trunks in question went aboard the steamship *La Bourgogne* as a part of the baggage of the claimant's wife."

The evidence shows that the steamship company was not advised of any personal claim of ownership on the part of Deslions. In this transaction it knew only its passenger, Mathile Faivre. It was not even advised of the relationship now claimed to have existed between Mathile Faivre and Deslions. For all its agents knew, Deslions was simply doing an act of friendship looking after *Mrs Faivre's* baggage. There is no evidence that he even disclosed his name to any person connected with the company. So far as the record shows, there is no evidence that the company or any person connected with it, knew of the existence of such a person as George Deslions until this claim was asserted. It is true that the petitioner's Acting General Agent, Freight Agent, and Pier Superintendent, seeing Deslions in court while they were testifying, stated that they had seen him on the pier on the morning *La Bourgogne* sailed, and related what took place, but they did not testify that they knew *then* what his name was, nor who he was.

Not only was the company ignorant of any claim

that he was the husband of Mathile Faivre, but the record does not show that he was in fact her husband. His account of the "ceremony" at which he asserts they became man and wife is farcical. What he alleges took place did not constitute even a "common-law" marriage (p. 1554, fol. 4655, *et seq.*) and we excepted (Exception 17) to the finding that this woman was his wife.

He is a stranger to this transaction. It is *res inter alios acta*, in which he has no rights or interest.

This claim must be tried, and must be sustained (if sustained at all) as formulated by the claimant. Not in this proceeding, more than in any other, can the claimant predicate his right of action upon one state of facts, and recover upon an entirely different one.

The statement of his claim is:

"That on the second day of June, 1898, *claimant* shipped on board of petitioner's steamship *La Bourgogne* a quantity of personal property, worth upwards of fifty thousand dollars, *under an agreement with petitioner* for a valid consideration received, that the same would be safely transported on said steamship to Havre, France, and there delivered *to claimant or his agents.*"

No candid reader will interpret this as a claim for the loss of personal baggage. The agreement described is evidently a contract of affreightment; a single definite agreement in which the transportation and delivery of the goods is the only thing contemplated and provided for.

Whereas the contract for the carriage of personal baggage is subsidiary to and dependent upon the contract of passage.

A claim for the loss of personal baggage would be fatally defective if it did not show that the claimant, or the person whose baggage was lost, was a passenger.

But we are saved the trouble of analyzing the formal statement of the claim, by reason of the fact that the claimant has himself interpreted it by testifying and reiterating, in various forms, and with full knowledge of the difference between personal baggage and freight (p. 1420, fol. 4243), that he *contracted* for the shipment of these trunks *as freight*.

There is a difference in the terms of a contract of affreightment and those of a contract for the carriage of the personal baggage of a passenger.

The claimant elected to rely on a contract of affreightment. He pleaded it, and tried to prove it. Having failed, he is now awarded damages as the husband of the owner of the personal baggage for the carriage of which the petitioner contracted with Mathile Faivre (the passenger and alleged wife), the contract being set out in her passage ticket.

The Courts below have found against the claimant in the matter which he most insists upon—a matter of fact involving his veracity—and have given him a favorable verdict rendered upon a theory which the claimant repudiates.

The authorities upon the precise question here involved are not numerous, but they are conclusive against the claimant.

The Court of Appeals (N. Y.) has defined the re-

lations between the carrier and the passenger as follows:

> "The carriage of the baggage of a passenger under reasonable limitations as to amount, is the ordinary incident to the carriage of the passenger, and the duty arises on the part of the company to carry the baggage of the passenger, an incident to the principal contract without any specific agreement or separate compensation.
>
> The obligation, moreover, includes, as in the case of merchandise, an obligation to deliver the baggage carried. There arises, therefore, on the sale of a passenger ticket a contract to carry the person and the baggage of the passenger between the points indicated, on the road of the company issuing it, and to deliver the baggage at the end of the route to the passenger or his duly authorized agent."
>
> Isaacson v. N. Y. C. & H. R. R. R. Co., 94 N. Y., 278 (283).

> "The contract between the railroad company and the plaintiff was that it would transport her baggage from Troy to the depot in the City of New York, and upon presentation of her check at that place, to there deliver the trunk to her or her agent making demand therefor."
>
> Springer v. Westcott, 166 N. Y., 117 (120).

Cases in which the concrete quetsion has come up for decision fully sustain the view of the New York Court of Appeals.

From the English decisions we cite the following:

> Martin v. The Great Indian Peninsular Railway Co., 3 Exchq., 9.

In this case the plaintiff, an officer in the British army, was a passenger on the defendant's railroad, and his luggage was lost or destroyed through the (conceded) negligence of the defendant.

The defendant pleaded specially that the plaintiff's luggage (although it belonged to him) was being carried under a contract made with Her Majesty's Indian Government.

The Court by Kelly, C. B., said:

> "As to the first count which sounds in contract, and in substance though not in form charges a violation of a contractual obligation, the plea is a sufficient defence, for, if the contract was not with the plaintiff, but with other persons—and the only charge is one of non-performance of the obligation created by it—no action can be maintained except by the person with whom the contract was entered into."

All the Judges concurred.

Martin v. The Great Indian Peninsular Railway Co., 3 Exchq. 9.

Plaintiff sent his servant ahead of him from Newmarket to London by the defendant's railroad.

The servant had with him a portmanteau belonging to the plaintiff filled with plaintiff's wearing apparel. The servant purchased a ticket and travelled to London, first handing over the portmanteau to the defendant's servants, for transportation on the same train as his baggage. The portmanteau was lost through the fault of the defendant. Plaintiff followed by a later train on the same day. The Judges announced as follows, p. 243:

Mellor, J.: I have no doubt that no action will lie at the suit of the present plaintiff. It is clear the defendants received the portmanteau as luggage of the servant. The servant takes the ticket and says nothing, but simply as any other passenger delivers the portmanteau with other things as his luggage, and the company's servants receive it as his luggage, to be carried as passenger's luggage. If the servant had stated when he took the ticket that the luggage belonged to the plaintiff, and that the plaintiff was coming by a later train, and the defendant's servants had received the portmanteau as the master's luggage, the case would have been very different. Here there is noth ing to impose any duty or liability on the defendants beyond the relation between them and the servant of carrier and passenger, they undertaking to carry his luggage free of extra charge.

"Lush, J. What was the position of the parties here? The defendants were bound by the statute to take a certain quantity of lug gage for the servant as their passenger, but if they had been informed that the portmanteau was not his luggage, they would not have been bound to take it, and in all probability they would not have taken it. It was taken as the servant's own luggage, and if any action can be maintained it must be in the name of the servant.

Hannen, J. Concurred."

Becker v. The Great Eastern Railway Co., 52 B., 241.

Plaintiff sent her servant to London by defendant's line. He carried with him a portmanteau containing his livery which belonged to the plaintiff. Through the negligence of the defendant the port-

manteau and livery were damaged and became useless, and it was held that plaintiff could not recover in contract as the contract made by the defendants was a personal contract with the servant, and that she could not recover in tort because the goods were not lawfully on the premises of the defendants. The plaintiff appealed.

Lord Esher, M. R. (p. 390), said:

> "There being no contract in this case with the plaintiff, she gets no right to sue for a breach of the contract which was made, and there is no duty towards her arising on contract. There is nothing in such a state of things that deprives the plaintiff of a right which she has independently of contract, and which she would have even if there were no contract."

A. L. Smith, L. J., said (p. 394):

> "Of this I am clear, that in the circumstances of this case the footman who had taken the ticket could have sued the company either on contract or in tort, but what damages he could have recovered it is not necessary to discuss. The question before us is whether the plaintiff can sue. She has incurred loss by reason of her property having been destroyed by the active negligence of the servants of the company while it was lawfully on the premises of the company; she has, therefore a right of action in tort wholly irrespective of contract. Her goods were lawfully on the defendant's premises, and by their active negligence those goods have been damaged. *That gives her a good cause of action in tort.*"

Kay, L. J., cited the case of Taylor v. Manchester, Sheffield and Lincolnshire Ry. Co. (1895), 1 Q. B.,

134, as decisive that the plaintiff had a good cause of action in tort.

Meux v. Great Eastern Railway Co., L. R. 2 Q. B. (1895), 387.

We find the same rule in the State of New York.

Weed & Weed v. The Saratoga & Schenectady R. R., 19 Wend., 534.

Plaintiffs, who were merchants in the City of New York, sent Barnes, their clerk, on a collecting trip. He took passage from Saratoga to Albany over defendant's line, paying his fare to Albany. His baggage was put on the car which was bound for Albany, but on his arrival at that place he found that one of his trunks was lost. It contained the sum of $285, which belonged to the plaintiffs, and to recover which the action was brought.

The plaintiffs having rested their case the defendants moved for a non-suit upon the ground (among others), "3. That no contract whatever between the plaintiffs and the defendants, either express or implied was proved; that the contract proved was a contract between the defendants and the witness (Barnes) on his own account to carry himself and his trunk."

There was a verdict for the plaintiffs, and a motion by the defendants for a new trial.

Cowen, J., said (p. 544):

"My brethren think that the third ground of the motion for a non-suit was well taken. They are of opinion that this being an action of *assumpsit*, and the agreement having been made apparently with Barnes as the party promisee,

the law will not imply a promise to the plaintiffs that the money should be carried safely, although it belonged to them; that there being in fact but one consideration paid, and but one contract, and that with Barnes, several promises cannot be thus raised to inure several ways, one to the plaintiffs for the carriage of the money, and another to Barnes for the carriage of his trunk and his person. On reflection I concur that there is a difficulty in this form of action, at least, in giving such an effect to the contract. This view is fatal to the action."

Weed v. Saratoga & Schenectady R. R., 19 Wend., 534, at p. 544.

In this case a father was allowed to recover the value of lost baggage, carried by his minor son, who was a passenger on the defendant's steamboat.

But the action was *on the case*, and not upon contract, and the Court upon that ground distinguished it from the Weed case *(supra)*.

Grant v. Newton, 1 E. D. Smith, 95 (General Term, Court of Common Pleas, N. Y. City).

The learned proctor for the claimant relied in the Circuit Court of Appeals upon the case of *Trimble v. N. Y. C. & H. R. R. R. Co.*, 39 App. Div., 403 (affirmed 162 N. Y., 84).

This case was decided in the Court of Appeals by a divided court, four of the Judges being for affirmance and three for reversal.

It appears from the synopsis of the brief of the plaintiff's counsel (p. 85) that the action was not brought upon contract, but in tort for the destruction of the property of the plaintiff's assignor.

The allegation in the complaint was:

"That the said defendant in violation of said agreement, so *negligently* carried the said trunk that the same and its contents were destroyed near the village of Garrisons, on the bank of the Hudson River, etc."

It is true that the Court of Appeals said:

> "The recovery in this case was not on the contract of passage entered into when the plaintiff's agent purchased his ticket, but on an independent agreement for the transportation of the sample trunk as freight."
>
> Trimble vs. N. Y. C. & H. R. R. R. Co., 162 N. Y., 84, at p. 91.

But the fact remains that the suit was brought, not *on* the contract, but for the tort of the defendant in negligently destroying what it had contracted to carry and deliver.

(In the case at bar the Commissioner found that there was no independent agreement).

The *Trimble* case *supra* is one of a series (e. g., *Sloman v. R. R. Co.*, 67 N. Y., 208, and *Curtis v. R. R. Co.*, 74 N. Y., 116), in which the Courts of the State of New York have held that the owners of sample trunks and of their contents can recover for their loss or destruction, although the contract for transportation was made with an agent, a commercial traveler, or drummer.

They are not applicable to the case at bar. It is not claimed here that Deslions, being the owner of goods to be transported by the steamship line, entrusted them to Mathile Faivre, his agent and employee; that he made a contract for their carriage and delivery; and that he claims the benefit of the contract made by her.

So far from that being the case, it is precisely the state of facts which Deslions repudiates, both on paper and upon the witness stand.

He denies that Mathile Faivre made any contract, for herself or for him, for the transportation of these trunks; he stands upon an independent oral contract, absolutely devoid of conditions or limitations, made by himself, in his own right, he not being a passenger, for the shipment of the trunks to himself at Havre, as freight. (Record, p. 44).

In other words, as stated in the cases, he declares upon a special contract (which the Commissioner found was not made).

It is set out in his statement of claim, which does nothing more than recite the terms of the contract and the breach of it by the petitioner, the allegation being that the property "has never been delivered according to agreement at Havre. (Record, p. 44).

The claim was not only formulated deliberately and intentionally as a claim for damages for breach of a contract of affreightment, made with the claimant; but the claimant, upon the witness stand, continued to insist that he personally made the contract with the petitioner's agent, and he showed that he understood thoroughly the difference between personal baggage and freight. (Record, p. 1420, fol. 4242; p. 1434, fol. 4285; p. 1450, fol. 4331).

He did not hesitate to raise the issue of veracity between himself and the witnesses for the petitioner, corroborated as they were by the documentary evidence of the transaction.

He testified (p. 1384, fol. 4135), "the trunks were first to be sent to Paris *as freight*;" (p. 1385, fol. 4136), "I think this is an outrage, that I should be

compelled to pay *freight* from here to Paris;" "We will have to make a deduction for the *freight up to Havre.*"

On cross-examination the claimant testified as follows:

(P. 1420, fol. 4242). "Q. What did you do down there from the time you arrived until the boat sailed? A. After I shook hands with the big Turk and saluted him I went to look after my wife and she was near *the baggage.* I had to stay by the baggage, and see that the baggage should be put on board the boat.

Q. Do you call all this stuff that you had there baggage? A. I call trunks and boxes whatever you want. They were in the shape of trunks and boxes; *freight is what they were.*

Q. On your direct examination you said that these trunks and cases were freight, didn't you? A. That is what they were—*freight, certainly.*

Q. *Do you know what the difference is between freight and personal baggage?* A. Personal baggage was the trunks of my wife which went with her; *these were sent as freight* to Havre, and *her trunks* were to go to Paris with her."

(P. 1433, fol. 4282). "*When did you make your arrangements with the steamship company for the shipping of this collection as freight? .A..The day the boat sailed, in the morning there with Mr. Faguet.*"

(P. 1434, fol. 4285). "They put the trunks on the scales and weighed them there.

Q. And at that time you told them you wanted them to go as*freight?* A. Certainly."

(P. 1434, fol. 4285, *et seq.*). "Q. What time did the collection leave your house? A. It was the day before.

Q. What instructions did you give to the expressman of what was to be done with them? A. To deliver them to the pier; that they were to sail with the *La Bourgogne*.

Q. As freight or baggage? A. *As freight; they couldn't go as baggage.*"

(P. 1435, fol. 4288). "Q. At the time you say they gave you this countermark you were told that these packages were to go as freight, were you? A. *As freight;* yes."

(P. 1449, fol. 4329). "Q. Your wife had a satchel and trunk of her own? A. Yes, but that was going with her to Paris.

Q. They didn't have any countermark on them? A. *They were going with her; my wife's trunk had nothing to do with that lot.*"

(P. 1450, fol. 4331). "Q. Did you see her trunks? A. I saw her trunks, but her trunks were on board of the steamer before that lot.

Q. When were they put on board the steamer? Your wife's trunks? A. Before this lot of trunks containing my collection.

Q. What do you mean when you say that accounts for her trunk not having the yellow mark on it? A. Because her trunk was baggage,*while the other trunks were freight; she is entitled to a certain amount of baggage.*"

(P. 1451, fol. 4334). "Q. They knew you were not going on that boat? A. I don't know if they knew it or not; *certainly they knew I wasn't going with that boat.*

Q. Did you tell some one that? A. *Yes, I told Mr. Faguet.*"

(P. 1558, fol. 4655.) "Q. You have testified about paying for a ticket, and also about these packages being sent by freight. Was that all paid for at once, or did you make two payments? Did you pay at one place for the tickets and at another for the freight? A. *The trunks had nothing to do with the ticket.* I said that before.

Q. That is the reason I ask you. It doesn't seem quite clear. Did you pay freight on the packages separately from the passage money? A. Yes."

The claimant produced a witness (Devoluy) who hauled these packages from the claimant's house to the steamboat pier. The witness was asked p. 1629, fol. 4869), "What did he tell you to do with them? A. To put them in the *third class* till he saw what he yas going to do with them, *take a second-class ticket or a third-class ticket.*"

(P. 1630, fol. 4873.) "Q. Who did you see when you got to the French Line pier? A. I saw the man that received *third-class baggage.*"

(P. 1631, fol. 4875.) "Q. Whereabouts did you unload the trunks? A. On the back of the dock.

Q. Do you mean the end of the dock, next the water? A. I mean on the dock by the *third-class baggage.*

Q. Did you get any receipt? A. No, sir, *they dont give any* receipt.

Q. You just unloaded them and left? A. Yes; that is what the *baggage master* told me to do."

(P. 1632, fol. 4878.) "Q. Did Mr. Deslions tell you anything about whether these trunks were to go as freight or as baggage? A. I *think he said*

baggage. He said they were to go with his wife."

The claimant produced another witness (Muller) who assisted Devoluy to deliver the trunks at the French Line pier. He testified, p. 167, fol. 4892, "Q. How long after you delivered these trunks at the pier was it that the boat sailed? A. Well, I don't know; I brought the baggage over there, and it was in the *baggage room.*"

Upon this question the petitioner's proof is as follows:

Paul Faguet was assistant agent of the French Line in July, 1898; on the day when *La Bourgogne* sailed he was acting agent, the general agent being in France. He (Faguet) was on the dock on the morning of July 2nd, up to the time *La Bourgogne* sailed (p. 1699, fol. 5078, *et seq*).

He saw Deslions at that time. Deslions complained that the *baggage-master* had *registered* the trunks to Basle instead of Havre; and Faguet saw *the baggage-master* and gave orders to make the change. Deslions told Faguet that the trunks were to go as *baggage* (p. 1700, fol. 5081, *et seq.*).

Faguet informed Deslions that there would be an extra charge as each passenger was allowed only 150 kilos of baggage and these trunks weighed more than that (p. 1700, fol. 5083, *et seq*).

The witness then identified a book as the dock-book of the petitioner, the entries in which relate exclusively to passenger business (p. 1701, fol. 5086, *et seq.*).

This exhibit in its original form accompanies the record.

The entries on page 39 of this book, as explained by the witness, showed that Mathile Faivre, accompanied by a baby less than one year old, was a passenger on *La Bourgogne* upon the voyage in question; that she travelled third-class; *that her ticket was numbered 17309;* that her destination was Basle, &c., &c. (p. 1702, fol. 5088, *et seq.*)

The witness also identified the order for the ticket, which had been purchased from an agent, and exchanged for the ticket itself, at the dock, on the morning of July 2nd, 1898 (p. 1704, fol. 5094).

The same witness next identified the list of baggage of the third-class passengers on board *La Bourgogne* (p. 1705, fol. 5096, *et seq.*).

He showed that there was alotted to Mathile Faivre's ticket (ticket 17309) 8 "*colis*" or trunks weighing 952 kilos.

Mr. Faguet reiterated that Deslions said nothing to him about shipping the trunks as freight, and that Deslions well understood they were to go as extra baggage. And he explained that at that time he (Faguet) had nothing to do with receiving freight; that Mr. Cauchois, the freight agent, was there for that purpose and had exclusive control of the freight department; that it would not have been possible to receive freight that morning on board the steamer without violating an inflexible rule of the Company, and that in receiving freight a bill of lading is given to the shipper (p. 1707, fol. 5103, *et seq.*).

This witness also testified that the Company did not receive personal baggage from anyone except passengers, and that Deslions could not have sent personal baggage on *La Bourgogne* unless he was himself a passenger (p. 1708, fol. 5107).

On cross-examination Mr. Faguet testified that Deslions showed him a passage ticket at the time of changing the destination of the baggage (pp. 1713, 1714 fols. 5122, *et seq*); and that they went together to the baggage master to make the change.

And on re-direct examination the same witness testified:

"Anybody who has a ticket can register the baggage and pay the excess; every day that is done; any day people come and register baggage for other people. I can register your baggage if I wish to, if I have your ticket." (P. 1724, fol. 5153),

Mr. Cauchois, who was freight agent of thecompany, and who was on the dock on the morning of July 2nd, 1898 (p. 1734, fol. 5184), testified that the Deslions' trunks were not shipped as freight (p. 1735, fol. 5186). He explained fully the minutae to be complied with by a shipper of freight (p. 1735, fols. 5186, *et seq.*), and why no freight can be put on board the steamer on the morning of sailing (p. 1739, fols. 5199, *et seq.*); and that no one but himself would have considered an application to receive freight on the morning of July 2, 1898 (p. 1739 fol. 5200).

Deslions having claimed that he shipped these trunks as freight and notified the company that their contents were worth $100,000.00, Mr. Cauchois showed what would have been the result if such a statement had been really made p. 1748, fols. 5225, *et seq.*). The freight charge would have been one half of one per cent., or $500.00 (p. 1748, fol. 5226).

Mr. Japhet, who was the dock superintendent of the company on July 2nd, 1898, and who personally disposed of all freight and baggage upon the dock, testified that no freight was put on board *La Bourgogne* that morning (p. 1752, fols. 5239, *et seq.*).

Mrs. Roess, a sister of Mathile Faivre, was produced as a witness for the claimant, in rebuttal. She was on the dock the morning of July 2nd, 1898. She was asked, "Do you remember whether Mr. Deslions paid any more money for the trunks? Did you see any money paid?" To which she answered, "I know he said he would have to pay more for the trunks than he would have to pay for *the tickets*, but I don't know how much." (P. 1943, fol. 5810).

Deslions, the claimant, also testified in rebuttal. He corrected his former testimony by admitting that the passage ticket (Mathile Faivre's) was for Basle and not for Paris. He states that he believed the trunks "were marked for Paris—or Basle, I can't tell exactly; but I remember distinctly I objected to that and wanted my trunks to remain inHavre, (p. 1958, fols. 5857, *et seq.*).

The claimant would not have dared to ship these trunks by freight, in his own name.

The petitioner showed by the witnesses Pool and Marquet (p. 1725, fols. 5156, *et seq.*), and by the records (p. 1979, fols. 5918, *et seq.*), that a few days before *La Bourgogne* sailed the claimant's landlord obtained jugdment against the claimant for unpaid rent of the apartment in which it is alleged these trunks were stored; that an execution was issued upon the judgment and a man was put in possession of the flat for three days and three nights; that an attempt was made to levy on

some Indian curios which were found in the flat; that Deslions protested that the curios did not belong to him, but to another man then present, and produced a bill of sale to this man; that the marshal refused to levy without being secured against the claim of the person holding the bill of sale; and that the landlord released the levy rather than be bothered with another lawsuit.

The claimant had testified as follows:

(P. 1558, fol. 4655). "Q. What were the circumstances under which you left or gave up your residence in Washington Square? A. Because I didn't want to stay there any longer; I was going abroad.

Q. Were you in arrears for rent at that time? A. I was not in arrears for rent; no.

(P. 1558, fol. 4657). "Q. Your landlord's name was Marquette, wasn't it? A. Yes.

Q. Did Mr. Marquette get a judgment against you for rent? A. I don't know what he had.

Q. You were sued, weren't you? A. I didn't know I wasn't (p. 1559, fol. 4659) in Court. I don't know if he had a judgment or what.

Q. If there is a judgment aginst you for the rent of that flat, is this the first you have heard of it? A. I don't know anything about it.

Q. Is this the first you have heard of it? A. Yes.

After the judgment and the levy had been proved as above related, the claimant took the witness stand in rebuttal, and his testimony given in answer to his counsel's questions (p. 1955, fols. 5846, *et seq.*), shows that he lied delib-

erately when he said that he had never heard of Marquette's judgment.

We shall show separately that the claimant swore falsely in many other particulars. We refer to this particular perjury in this connection because it shows that the objection to the report which we are now considering is not merely technical.

It is not a case in which a litigant has innocently mistaken the nature of his cause of action. It is a case where he has deliberately falsified the facts in order to establish a contract which he never made.

These trunks were delivered to the petitioner as the property of Mathile Faivre, a passenger, and as part of her personal baggage; and this was done by the claimant intentionally, to defraud a creditor and the petitioner.

But it may be asked why, after the death of the woman and child, he did not continue the fraud, take out letters of administration, and claim damages for the loss of the baggage, as the property of the deceased.

Because he could not have obtained letters of administration. The woman was not his wife, and it is doubtful if the child was his child.

His testimony on that point is as follows:

(P. 1432, fol. 4279). "Q. By what name did you engage passage for her? A. Mathilde Faivre and child."

(P. 1433, fol. 4281). "Q. What class did she go? A. It was a third-class ticket.

Q. Why did you take passage in the name of Mathilde Faivre? A. Because she wanted to; *she wanted to surprise her mother when she got there.*

She thought if she registered under my name—

Q. What was her maiden name? A. That was her maiden name."

(P. 1479, fol. 4418). "Q. When you left New Mexico at the end of your trip in 1896 where did you go next? A. To New York.

Q. You brought your wife and child back with you? A. No.

Q. Where did you leave them? A. I left my wife there and brought my child back here.

Q. Where did you take your child when you got back to New York? A. I buried my wife in Mexico."

(This was claimant's first wife).

P. 1524, fol. 4555). "Q. What was the date of the death of your first wife? A. I don't remember.

Q. You have no way of fixing the date of your first wife's death? A. No, I don't remember."

Vol. III, p. 1524, fol. 4555. "Q. What was the date of your second marriage? A. I don't remember.

Q. Did you make application for a ticket for your wife and child on this boat? A. Yes.

Q. Did you tell the agent what the child's age was when you applied for the ticket? A. My wife told the agent.

Q. What did she tell the agent the age of the child was? A. He asked if the child was over a year; if it was, that we had to pay half a ticket.

Q. What did she say? A. Yes.

Q. That it was over a year? A. Yes, certainly.

Q. And he took that down in your presence? A. I presume so.

Q. And did he charge you half price for the child? A. Yes, because the child was too old to go with the mother; a nursing shild.

(P. 1525, fols. 4558, *et seq*). "Q. Wasn't this child ticketed and shipped as nursing child? A. Not at all.

Q. You swear to that, do you? A. Yes, I could swear to that.

Q. When was the child born? A. *In the spring some time; in the spring, I believe.*

Q. In the spring of what year? A. *I don't remember; I lost the paper about that;* I don't remember."

Compare p. 1436, fols. 4291, *et seq.*

"Q. When you went to Gasser's for this ticket did you get the ticket or an order for the ticket? A. He gave the ticket; a ticket and a half; one-half for the child; and the ticket for my wife.

Q. How old was the child? A. The child was *probably* two years; *two* or *three* years.

Q. Aren't you mistaken about that? A. The child wasn't more than *four years* anyway.

The order for the ticket was offered in evidence (p. 1704, fol. 5094). It accompanies this Record and is in its original form, and is marked Petitioner's Exhibit 5.

It reads:

"Please to give to Mahile Faivre & infant passage for One (written) Adults (printed) children bet. 1 & 12 years (printed).

One (written) *infant under one year* (printed).

Claimant swears he moved to Washington Square from Dutch Kills, L. I., in the fall of 1897 (p. 1423, fol. 5241); that he moved to Dutch

Kills from No. 165 West 23rd street, New York City, in April or May of 1897 (p. 1425, fol. 4256); and that he had then lived at No. 165 West 23d street since the fall before (1896) (p. 1425 fol. 4257), and that he was married at No. 165 West 23rd street "in the Spring" (p. 1554, fol. 4645).

He must therefore, have been married in the Spring of 1897. The child which was lost on *La Bourgogne* was the issue of this marriage.

The claimant thus became emeshed in a web of lies.

He swears positively (p. 1436, fol. 4291) that the child was over eighteen months old. It must, therefore, have been born before the 1st of January, 1897. If it was two or three or four years old, it was born an indefinite time before that. Yet the order for the ticket describes it "as under one year."

The so-called marriage was accomplished as follows:

(P. 1554, fol. 4645, *et seq.*). "Q. Were you married in New York City A. Yes.

Q. By whom? A. Before the *witness* and signed by a notary public.

Q. What do you mean? A. Contract of marriage? A. Yes.

Q. You were not married by a clergyman A. Not married by a clergyman, no.

Q. Nor any person authorized to solemnize marriage? A. We signed a certificate of marriage on the Bible before four witnesses; probably more

parties were there; and we had the ceremony legalized by a notary public.

Q. Who were the witnesses? A. One was a gentleman who was chef at the Waldorf-Astoria, Mr. Tenu.

Q. Is he still there? A. No, he isn't there any more; he died last July or August.

(P. 1574, fol. 4703, *et seq.*). Q. You stated at the last session that when you were married the second time you signed a certificate of marriage on the Bible. What became of that Bible? A. On board the *Bourgogne.*

Q. You stated that the ceremony was legalized by a notary public. What do you mean by that? A. A notary public certified the signature of my wife and my signature.

Q. Who was he? A. He was a notary public living on 23rd st.

Q. Do you know his name? A. No.

Q. Did you ever see him before? A. I saw the office before, of notary public.

Q. Have you seen him since? A. Probably; I couldn't tell you; *I don't pay any attention to him.*"

This claimant found himself in a position in which he was compelled to swear falsely if he prosecuted a claim against the petitioner. He knew that these trunks had been delivered to, and received by the petitioner as the personal baggage of Mathile Faivre, a passenger. And he knew that if he attempted to take out administration upon her estate he could not obtain it, and that if he attempted to prove he was her husband he could not do it. So he determined to add perjury to

fraud, and invent the contract of affreightment upon which he declares.

The learned Commissioner, by his report, convicts the claimant of perjury, but gives him the same relief as if he had told the truth, and bases his decision upon the very evidence which convicts the claimant of perjury.

And the Circuit Court of Appeals, both in the opinion of the majority of the Court affirming the award to Deslions, and in the dissenting opinion of Judge Wallace, also found that Deslions was absolutely unworthy of belief.

This claim must be determined upon the same principles as other, *secundum allegata et probata.*

It has been determined it *contra allegata et probata.*

2

The learned Commissioner erred as to the measure of damages.

When property has a market value witnesses may testify thereto as a fact known and proved.

Am. & Eng. Enc. Law, 2nd Ed., Vol. 12, p. 475.

The goods were to be "safely transported on said steamship to Havre, France, and there delivered to claimant or his agents." (See statement of claim).

The measure of damage is, the value of the goods *at Havre* in the condition in which the petitioner undertook to deliver them, at the time when they should have been delivered.

Hutchinson on Carriers, Sec, 769.
Sedgwick on Damages, 8th Ed., Sec. 844.
The Patrick Henry (S. D., N. Y.).
1 Ben., 292 (S. C., 18 Fed. Cases, No. 10805).
The Mary J. Vaughan (S. D., N. Y.), 16 Fed. Cases, No. 9217).

"*The Mary J. Vaughan*" was affirmed, 14 Wallace, 258, where the Court said (page 267):

"In the District Court it was held that the proper rule of damages where the cargo is lost in transit by the collision, or other tort, is the value of the goods at the time and place of shipment. It was conceded that upon the breach of a contract for the delivery of goods at a particular place the measure of damages is the full value of the goods at such place. Both propositions are correct and are well settled in our jurisprudence."

The Mary J. Vaughan, 14 Wallace 258, at p. 267.
The Gold Hunter (S. D., N. Y.) Blatchf & H., 300 (S. C., 10 Fed. Cases, No. 5513).
The Nith, 36 Fed. R., 96.
Reed v. The Compagnie Generale Transatlantique, 1 City Court Rep., 16.

In the last mentioned case Reed was a first cabin passenger on board the defendant's (the petitioner

here) ship "*Amerique*" from New York to Havre. He took with him a trunk and portmanteau filled with clothing, etc. The "*Amerique*" became disabled and was abandoned at sea. Reed sued for the value of his goods. The opinion is by the late Judge McAdam, and evidences that thorough knowledge of the law of the case which he always exhibited, and which afterwards caused him to be universally recognized as one of the ablest Judges of the Supreme Court of this State.

The opinion concludes:

> "The plaintiff will, therefore, be entitled to judgment for $500, the assessed value of the property in France, at the port of delivery."
>
> Reed v. Compagnie Generale Transatlantique, 1 City Ct. Rep. 16.

Judge McAdam did not waste any space on citations in support of this rule of damage. It is elementary.

The record will be searched in vain for any evidence whatever on the part of the claimant, as to the value of these godds, or of any portion of them, at the point of delivery, Havre.

All of the witnesses called by the claimant were men who claimed to be familiar with the prices of goods of this character in this country, and we maintain that their evidence, even as to value, was inadequate and insufficient. No witness was called to prove the value of these goods in France, and there is not the slightest testimony in the case as to what their value would be at the point of delivery, as required by the rule above pointed out.

3

For certain items of the claim no allowance could be made in any event.

The claimant, on cross-examination, finally settled on a list of articles as a true statement of his loss. The list is copied in the record (p. 1567, fol. 4684, *et seq.*).

The turquoises, oil paintings, portraits, engravings, miniatures, watch, jewelry, silver spoons, silver forks, etc., enumerated by the claimant and every article in the list that answers to the descriptive words used in the statute (R. S., Sec. 4281) must be eliminated. It cannot be told from the report whether the Commissioner allowed or disallowed any of these items.

See discussion on pp. 50, *et seq.* of this brief, as to construction and application of (R. S., Sec. 4281) to shipments of this class of property.

4.

The whole testimony of the claimant should be disregarded.

This point is raised by the twenty-fifth exception. (Record, p. 1320).

We do not desire to unduly prolong the discussion as to this claimant's veracity, but the Commissioner having found that the claim was exaggerated, and Judge Coxe, writing the opinion for the Circuit Court of Appeals, having spoken of his false swearing, and having ascribed it to a form of mental aberration, and Judge Wallace, in his dissenting opinion, having found that the claimant's testimony was "so full of falsifications that it is utterly unworthy of credit," we feel that it is our duty to point out to the Court a few of the many instances in which this claimant testified falsely as to material matters in the case.

We have pointed out in subdivisions 1, 2 and 5, of this Point, many glaring instances of his false swearing.

He testified falsely as to the number of trunks in which the collection was contained, and which he said he had shipped on the *Bourgogne*. (See his testimony, Record, p. 1418, fol. 4236, and p. 1422, fol. 4247, *et seq.*)

The records of the petitioner contradict the claimant absolutely. (Record, p. 1701, fol. 5086, *et seq.*; Record, p. 1705, fol. 5096).

The learned Commissioner accepted the claim-

ant's statements as to the number of his trunks against the documentary evidence in the case.

He swore falsely when he testified that he did not remember the number of the house he lived in on the day his alleged wife and child sailed for France. (Record, p. 1417, fol. 4234). He did not remember whether he went to the ship with his "wife" and child (Record, p. 1419, fol. 4239).

He did not remember whether he had breakfast with them te last day he saw them alive (Record, p. 1420, fol. 4241).

It seems incomprehensible that a man could be so brutal as not to remember whether he breakfasted with his "wife" and baby on the day when they left on their last voyage.

He did not remember the date of the death of his first wife (Record, p. 1524, fol. 4554); nor the date of his marriage to Mathile Faivre (p. 1525, fol. 4556); nor the age of the baby which was lost with the *Bourgogne* (p. 1436, fol 4291).

He lied deliberately concerning the age of the child (p. 1525, fol. 4556). The child was taken on board as a nursing child, for which no charge was made.

He lied concerning the cartage of his trunks from his house to the pier (p. 1418, fol. 4237).

Concerning the purchase of the articles in his collection, he made, or testified he had made; the Record, at p. 1513, fol. 4522, will give the Court a fair idea of how recklessly, and with what utter disregard to the obligations of his oath, he testified.

As to the value of the contents of his trunks, he testified he told Mr. Faguet, the agent of the Com-

pany, that they were worth One hundred thousand dollars (p. 1436, fol. 4289); and that he was then charged about Forty dollars excess freight. The freight would have been one-half of one per cent. (p. 1478, fol. 5226). (See also, on this point, p. 1562, fol. 4669).

Judge Wallace, considering the testimony of the claimant, said: "It is apparent throughout that he has been influenced by the motive of withholding any information which might offer an opportunity to the Steamship Company to expose the fraudulent and extravagant character of his claims."

In support of this opinion of Judge Wallace, we refer the Court to the following pages of the Record: p. 1444, fol. 4315; p. 1445, fol. 4317, *et seq.;* p. 1446, fol. 4321; p. 1454, fol. 4343; p. 1456, fol. 4349; p. 1458, fol. 4356; p. 1457, fol. 4353; p. 1460, fol. 4362, *et seq.;* p. 1471, fol 4395; p. 1478, fol. 4417; p. 1483, 1484; p. 1490, fol. 4453; p. 1491, fol. 4456; p. 1526, fol. 4559, et seq.; p. 1550, fol. 4632; p. 1496, fol. 4469; p. 1533, fol. 4582.

When asked how many war-shirts he had in his collection, he answered, several. When asked what he meant by several, he said more than one (p. 1533, fol. 4582); and on the list which he submitted in support of his claim in this case, he had forty (p. 1534, fol. 4593); and it was impossible to compel him to state where he had purchased these forty war-shirts, which he valued at Five thousand dolars (p. 1577, fol. 4712).

The only war-shirt, the peculiarities of which he could remember, and to which he attached special value, he said he had paid Seventy-five dollars for (p. 1531, fol. 4575), and yet in his claim against

this petitioner he charges One hundred and twenty-five dollars for each one of the forty war-shirts, good, bad and indifferent.

The claimant made no attempt to obtain the testimony of any of the parties from whom he purchased his wonderful collection.

(P. 1550, fols. 4633, *et seq.*) "Q. In the four years that have elapsed since the *Bourgogne* was lost, what effort have you made to obtain any data or information from any person of whom you purchased goods, to enable you to testify upon the trial of this claim? A. *I don't see any purpose for me to do it.*

He testified that he had sold his household furniture at the time he had made the arrangement to ship this collection to Europe, and when asked concerning how much he had got for it, replied, "I don't remember." Q. Did you get $50 for it? A. *I don't remember. I did not sell it; I was out when the man came and bought the goods.*"

In rebuttal claimant swore (p. 282): "When we went to the steamer that day—I went the day before to an auction room on the corner of 28th Street and University Place, Mr. Bowe—and he sent a man on Friday and he looked the stuff over, *and I agreed for a certain price; I sold it to him*, and he came on Saturday morning."

(P. 1560, fol. 5563, *et seq.*) "Q. How much cash did you have at the time the *Bourgogne* sailed? A. How much I had in my pocket?

Q. Anywhere; how much in money? A. *A few thousand dollars.*

..Q. How many thousand dollars? A. *A couple of thousand.*

He also testified that his "wife" had several hundred dollars in her satchel when she sailed; but he did not remember how much (p. 1560, fol. 4463, *et* seq.), and yet he was making extraordinary efforts to give her $20 just before *La Bourgogne* sailed.

With reference to the subject of cataloguing his collection, since it was of such great value, the claimant testified that he shipped his catalog with the collection (p. 1443, fol. 4311); and that he had no duplicate of it. "The catalog was a book in itself. I intended to publish it."

He testified that he had a full description of all of the articles in the catalog (p. 1589, fol. 4748).

George W. Grinnell, a witness for the claimant, testified that he had seen the collection, at some building on the south side of Washington Square (p. 1602, fol. 4789), so that it must have been shortly before the loss of the *Bourgogne*.

On redirect-examination Mr. Grinnel testified that he had had a conversation with Deslions about a catalog of his collection. That he had told Deslions that it was a shame that his things were not labeled, and that Deslions replied that he had all the information, and *was going to write it down*.

It would serve no good purpose to multiply extracts further. The foregoing is sufficient to convince the candid reader that the claimant is not only an habitual perjurer but that he has lied in many instances when the truth would have better served his purpose.

Judge Townsend in his opinion in the limited liability proceedings said concerning a witness:

"Commeau, the steerage passenger, on whose testimony claimants largely rely, made such an unfavorable appearance and told such an extraordin-

ary story on the witness stand that his whole testimony must be discredited."

In *the Santissima Trinidad*, 7 *Wheaton*, 283, the Court said respecting this kind of witness (338-9):

> "If the cause stood solely upon the testimony of the witnesses who have been examined on behalf of the libellants, we should have great hesitation in admitting the conclusions which have been drawn from it. The witnesses, indeed, speak directly and uniformly either to the point of illegal equipment, or illegal augmentation of force within our ports. But their testimony is much shaken by the manifest contradiction which it involves and by declaration of facts, the falsity of which was entirely within their knowledge, and has been completely established in proof. It has been said, that if witnesses concur in proof of a material fact, they ought to be believed in respect to that fact, whatever may be the other contradictions in their testimony. That position may be true under circumstances; but it is a doctrine which can be received only under many qualifications, and with great caution. If the circumstances respecting which the testimony is discordant, be immaterial, and of such a nature, that mistakes may easily exist, and be accounted for in a manner consistent with the utmost good faith and probability, there is much reason for indulging the belief, that the discrepancies arise from the infirmity of the human mind, rather than from deliberate error. But where the party speaks to a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice, under such circumstances are

bound, upon principles of law, and morality and justice, to apply the maxim, *falsus in uno, falsus in omnibus.*

What ground of judicial belief can there be left, when the party has shown such gross insensibility, to the difference between right and wrong, between truth and falsehood. The contradictions in the testimony of the witnesses of the libellants have been exposed at bar, with great force and accuracy; and they are so numerous that, in ordinary cases, no court of justice could venture to rely on it, without danger of being betrayed into the grossest errors."

The Santissima Trinidad of Wheaton, 283 at p. 338, 339.

The Commissioner, the Circuit Court of Appeals, in its opinion by Judge Coxe affirming this award to Deslions, and by Judge Wallace in his dissenting opinion, having found that the claimant exaggerated his claim, and is involved in numerous contradictions; professing ignorance of matters which should be within his knowledge, and failing to remember facts which it seems incredible he should have forgotten; and his testimony is so full of falsifications that it is utterly unworthy of credit; and that he has discredited himself twenty times over; we submit that this Court should apply the doctrine applied in the *Santissima Trinidad, supra*, and that the award to this claimant be reversed, and the claim dismissed.

5.

The commissioner's valuation ($25,000) is without the least support in the evidence.

In the first place there is no difficulty in proving the market value of this class of goods. The very numbers of each kind, and the method of making up the list (p. 1567, fol. 4886, *et seq*), show that whatever claimant had was ordinary commercial "stuff."

He claims to have purchased largely and very frequently from a man in Santa Fe, New Mexico, and says:

(P. 1454, fol. 4344.' "He would send me *stuff* sometimes every week."

Vol. III, p. 1475, fol. 4408. "Q. When you left New Mexico did you bring any curios away with you, or had you sent them all east to be sold; when you left there had you any stock of these goods on hand, or had you sent them all east? A. I had several trunks of *stuff* with me.

And he took *six* or *seven* trunks with him to New Mexico (p. 1498, fol. 4470) and returned with only *four* or *five* (p. 1482, fol. 4428) the above "*stuff*") characterizes his entire "collection" on his return (1896 or 1897).

His instructions to the Farmers' Mercantile Company, Rushville, Nebraska, were:

(P. 1546, fol.4620). "Send me everything you have."

He testified:

(P. 1485, fol. 4437). "Q. Your business was buying and selling curios' wasn't it? A. Yes.

Q. It was your business to sell them as much as to buy them? A. Yes.

Q. You were a speculator in curios, weren't you? A. I was.

The last purchase he made was of "a bundle of stuff."

(P. 1444, fol. 41315). "A man came to my house *with a bundle of that stuff* and asked me if I would purchase them.

Q. A dealer? A. No; probably an ex-collector; I don't know.

Q. How much of a purchase did you make of him? A. Oh, it was only a small purchase. I think only two or three hundred dollars.

See p. 1445, *et seq.*, for a description of the "stuff."

Claimant started by buying some tobacco pouches, about a year after he arrived in this country.

(P. 1442, fol. 4300). "Q. Where did you buy those tobacco pouches? A. I don't know; *in some store going around the city.*"

P. 1459, fol. 4359). "Q. All the articles you dealt in were things that had a market value? A. Certainly.

(P. 1498, fol. 4477). "Q. Each of these articles that you have mentioned that you bought of Buckskin Jo was an article well known to dealers and collectors, wasn't it? A. It was.

"Q. Having an ascertainable market value? A. *Certainly.*"

He claims to have purchased from Buckskin Jo such things as Indian tents, collars made of grizzly bear claws, and scalps. If these had a market value certainly everything else he had must have had a market value.

But the claimant refused to be bound by the market value. He testified respecting the value of the miniature Alaska boat.

(P. 1501, fol. 4484). "Q. Didn't you testify on your direct examination what that boat was worth? A. Probably.

"Q. How did you form your opinion as to what it was worth if you don't know what was paid for it? A. That has nothing to do (p. 1501, fol. 4485) with what I paid for it; if I find twenty dollars on the street is it good for twenty dollars?

"Q. Is that the theory upon which you fix your values upon this examination? A. *Not the market value.*

An effort was made to distinguish between a "collection" consisting of rare articles, not for sale, and ordinary commercial articles. But there is nothing in the record to indicate that claimant had a 'collection," as distinguished from a stock of cheap merchandise, except his references to his "collection."

His articles were not separated. They were mixed indiscriminately.

(P. 1521, fol. 4546). "Some I sold, and some I kept in my collection; the best specimens I would keep in my collection.

Q. What proportion did you keep and what proportion did you sell? A. I don't know.

Neither was there (or should there have been) any difficulty in giving a categorical description of

the articles alleged to have been lost, even without a catalogue.

Claimant produced a list of articles said to have been lost.

(P. 1389, fol. 4149). "I made this list remembering what I had in my collection. I was very familiar with what I had in my collection; I have seen it a number of years every day, before my eyes, I certainly would remember; I would remember it a hundred years from to-day."

(P. 1390, fol. 4151). "I can tell what is in that list;" (the list of articles lost) "that collection of North American Indians was—*I remember what is in my collection.*"

(Here claimant calls the entire list of articles lost a "collection.")

"Q. Wait a moment. My question is whether you can, without looking at the paper at all, tell us every article that was in that collection of yours, beginning with the first one and going right through to the end, from your memory? A. *Very near.*

"Q. Then you will have to begin with the first one, whatever it was, and go through with them if you can. A. *My collection is very fresh in my memory.*"

(P. 1494, fol. 4465). "A collector must have a very good memory for his collection * * * *the thing I remember best is my collection.*

(P. 1589, fol. 4748). "*I could give you the description of every article in general* * * * *I could describe every article.*"

The learned Commissioner, therefore, erred in reporting that it was difficult to describe the arti-

cles alleged to have been lost, or to put a value upon them.

He has also ignored the positive testimony of the witness Faguet that Deslions told him, when he (Deslions) came to the petitioner's office immediately after the catastrophe, that the goods lost were "of very great value; probably 25,000 francs." (p. 1709, fol. 5110).

He has also ignored the testimony of the witness Keppler, who had dealings with the claimant and throughly exposes the gross exaggeration of values by the claimant (pp. 1756, *etseq.*).

Also the testimony of the witness Riggs, who swore that Deslions exhibited most of his goods to him, and who testified that what he saw was not worth over $1,500 at a liberal estimate (p. 1187, fol. 5432; p. 1818, fol. 5436; p. 1819, fol. 5438; p. 1922, fol. 5748).

While thus ignoring every particle of evidence adduced by the petitioner, the learned Commissioner reports that the *description* of the articles lost given by the claimant "is to some extent corroborated by the witnesses Grinnell, Mason, Tonnele, Haywood, and others."

There was no such witness, to our knowledge, as Mason.

Of the witness Tonnele, the claimant himself said (p. 1487, fol. 4483) "*He has never seen my collection.*"

The witness Haywood testified:

(P. 1928, fol. 5766). "I have seen parts of Mr. Deslions' collection at various times; *I am not sure that I ever saw his entire collection; in fact, I am quite sure that I have not.*"

The witness Grinnell testified:

(P. 1602, fol. 4789). "*There were other objects in chests or trunks; but most of those things I never saw.*"

"He opened his trunks, or some of them, to show me certain objects that he had in the trunks, that he especially valued or wished me to see, and I saw that in the trunks there were other things; but they were all wrapped up and piled together, and of course I don't know what they were."

As to many articles in the claimant's "collection" Mr. Grinnell either denied having seen them or remembered nothing about them.

Being asked whether he formed any judgment as to the value of the whole collection he answered p. 1672, fol. 4998), "I did not; I didn't *see enough of it.*"

So that the learned Commissioner erred in reporting that the description given by the claimant was corroborated by any of the witnesses named in the report, and he erred especially in finding that the witness Grinnell confirmed the claimant's valuation. The fact is precisely the other way.

Neither did the claimant give any description which could be corroborated.

The learned Commissioner has reported:

"The values given by Mr. Deslions of the different articles are perhaps somewhat exaggerated, but in many cases sustained by the witness Grinnell, a man of great intelligence, who had made a study of Indian curios for over thirty years. Some differences exist between them in their estimates, but on the whole I think Mr. Grinnell substantially sustains Mr. Dselions' valuation."

Deslions' valuation is $100,000. Why, then, is it cut down to $25,000?

From Mr. Grinnell's testimony we extract the following (direct):

(P. 1601, fol. 4785) "Q. What is your business? A. I am a newspaper writer, and writer of books." * * * "President of the Forest and Stream Publishing Company."

(P. 1605, fol. 4787). "Q. Have you ever been in the business of collecting yourself? A. No. That is to say, I have acquired things, but I never have been in the business of collecting commercially."

(P. 1605, fol. 4796). "Q. You have seen photos of Indians where duplicates have been lost, that were taken years ago? A. Yes."

"Q. Do you know, generally, what the value of them would be? A. No, I don't know what the value would be. I should have no means of saying what the value would be. *I don't know.*

(P. 1607, fol. 4802). On the subject of medals):

"I have seen a great many medals; I have gotten hold of one or two, and am very anxious to get hold of others; I know what I would pay for medals."

Q. Is that based on any knowledge of other sales or prices asked? A. I don't think it is; no."

(P. 1608, fol. 4806). (On the subject of Indian pipes):

These pipes have just as many different values as white men's pipes would have; some are cheap and some are dear."

The witness was shown a photograph of some pipes and marked some of them as pipes which he had seen in the claimant's possession.

(P. 1610, fol. 4811, *et seq.*). "Q. What value would you put on those that you have marked?

Objected to as incompetent, no foundation having been laid for an expression of opinion by this witness.

Objection overruled.

A. It is exceedingly difficult to say what the market value is of a thing you can't go out and buy,

After further objection by petitioner's counsel.

"The Commissioner: I will take the witnesses's ideas as to the value. A. This is rather a difficult position, because while I remember these pipes as things that I have seen, I don't remember details about that. I *think*, for example, this upper pipe, No. 1, is something *that might be worth*," etc. etc.

Q. From what you see of this photograph and what you saw of the pipes themselves, can you give us a fair estimate of what a collection of 300 *such* pipes would be worth? A. No, sir.

On the subject of the value of arrow heads:

(P. 1612, fol. 4818). "*I don't know. These are articles that are in the market, as you can find out by going to the proper people what they are worth.*"

On the subject of the value of certain Indian dolls:

(P. 1613, fol. 4820). *I can't intelligently answer that question.*"

"Q. Can you put any value that you think such a doll would be worth to collectors (Vol. III, p. 1613, fol. 4821)? A. No, I can't.

On the subject of the value of books in reference to Indian matters, objection being made, the following occurred:

(P. 1614, p. 4824). The Commissioner I would rather have Mr. Grinnell's opinion than that of dealers. I know him to have been studying on this one topic for twenty or thirty years back, on the value of books and articles of that kind; his evidence is good."

On the subject of the value of Indian rattles:

(P. 1615, fol. 4828). "Q. Have you any knowledge with reference to their value here, anywhere, among collectors? A. *No, I think not.*

(As to Indian drums):

(P. 1616, fol. 4830). "Q. Do you remember any Indian drums? A. I don't remember any Indian drums, no.

Q. Do you know anything about the value of them, ceremonial drums? Are you able to put, from your own knoweldge, a fair value on them? A. *I don't think I know anything of their value.*

(As to some war clubs):

(P. 1617, fol. 4832). "Q.Do you know anything about the value or cost or price of them, or anything? A. A good many different prices for different kinds. They are not like eggs; some are valuable and some are not valuable."

(As to tomahawks):

(P. 1617, fol. 4834). "It depends on the character of the implement."

(As to buffalo shields):

(P. 1619, fol. 4839). "Q. What, if anything, do you know about any price that has been

paid for buffalo shields? A. *I don't think I know anything.*"

The whole of the testimony of this witness is of the same character. He was perfectly fair and frank and uniformly *disclaimed* any qualification to testify authoritatively either as to the particular articles, or similar ones.

With respect to the whole subject of Indians and Indian articles he was asked:

(P. 1660, fol. 4963). "Q. You were simply interested in the ethnological aspect?"

And he answered "yes."

The conclusion of his cross-examination is as follows: (See p. 1670, fol. 4993).

> "Q. I simply wanted to know whether or not you haven't been compelled to give your opinion as to value here, with rather insufficient data? A. I think I have, certainly; I agree with you there, perfectly.

Mr. Benedict: We will all agree to that.

Mr. Grinnell is a literateur, and ethnoligist, and a gentleman.

The claimant was a peddler.

The learned Commissioner has guessed at his allowance, without data upon which to hazard even a guess.

6.

The evidence as to the contents of the trunks at the time of shipment is too indefinite t oform a basis of valuation.

The claimant is the only witness to prove *the contents of the trunks when delivered to the carrier.*

He furnished no certain data for the Commissioner's guidance, even upon his direct-examination. For instance (p. 1391, fol. 4156) he said he had 500 Indian Photos, some of which were worth five or ten dollars apiece (p. 1392, fol. 4159)—"we would say that they were worth half a dollar apiece, no less."

Again—the Indian Medals—(p. 1392, fol. 4159), *"I think* I had ten medals in my collection, *ten or twelve."* (p. 1393, fol. 4160). "They were worth $25 apiece and more, there were some worth $30, or $35 and $50 apiece."

The Indian Pipes (p. 1393, fol. 4161)—"about 300 pipes"—"some were very valuable"—"worth several thousand dollars"; "I had over $3,000 worth of pipes."

Other pipes (p. 1393, fols. 4162, *et seq.*) from every country in the world;" "several hundred;" worth "three or four or five thousand dollars, and possibly more yet"; one pipe "may have been worth to a man a thousand dollars, or it may be worth $5,000, if he didn't have that pipe"; *$500* was offered one time for that pipe."

Arrow Heads (p. 1394, fol. 4164), made of obsidian, and *different other stones;*" "I had five or six hundred"; worth "five or six hundred dollars."

Indian Dolls (p. 1394, fol. 4165), "I *think* I had *ten*"; "*some* had been made by Sitting Bull and his wife," and *some* represented Sitting Bull and his wife"; value, "$15 or $20 apiece, *or more.*"

Aztec Masks (p. 1395, fol. 4166 , "I *believe* I had *about* ten masks"; worth $100 apiece."

Books, (p. 1395, fol. 4167), "I had Schoolcraft, McKim Hale illustrated, I had a *portfolio of George Catlin*, which was published in London something like the beginning of *this* century, 1811 or 1814, or something like that; his books are very scarce; I had a book *published* by a *missionary*, of which there are very few sample, worth $150; *I forget the name of the author;* it is very scarce and rare, and very valuable.

Q. What value do you say they were fairly worth? A. $500, or they were worth more than that."

Mexican Suits (p. 1396, fol. 4169), two, "I *think* they were worth *something like* $100 American money, apiece."

Mexican Sombreros (p. 1396, fol. 4170). "I *think* I had two also"; "I paid $50 for one"; "I don't recollect exactly what I paid for the other; $25 or $30 or may be more."

Mexican Spurs (p. 1396, fol. 4171), "one pair of solid silver; it weighs about a pound, *or something like that;* I paid $250 *or something like that.*" No, I had another pair of silver; I had two pairs of silver"; they would be worth $500 for the two pairs."

"I had some of iron, yes, sir; *several* pairs of iron; *I believe two* pairs of iron"; worth "50 or $75 a pair."

Mexican Bridles (p. 1397, fol. 4172), "one bridle with silver ornaments, very elaborately finished;" "I had *some* others"; one bridle worth $250, and another one *I believe about* $100."

Mexican Saddles (p. 1397, fol. 4173), "I remember one saddle'; worth "500 or $600; I can't say exactly; possibly more; I think it was more even than that."

Mexican Trunks (p. 1397, fol. 4173), "I think there was two; I had two; but one was very handsomely worked;" worth "$150 or $200."

Peruvian Mummies (p. 1397, fol. 4174), "One man and one woman, *supposed to be father* and mother *and child"; I* believe I paid $900 or $1,000 for them, and they are *probably worth$1,500 or $1,600."*

Peruvian Heads (p. 1398, fol. 4175), "three or five; five, I believe, worth $125 or $150 apiece."

Indian Masks (p. 1398, fol. 4176), "about ten or twelve; I *think* it was ten; I want more time than this; I want to think of this; I *have to remember where they were disposed in my room.*

Q. Take your time and think of it.

A. Ten.

"Some were worth $25 apiece, *and more:* I have sold some for $50 apiece."

Alaskan Masks p. 1398, fol. 4176). "a series of masks, for the medicine man to represent every sickness; there were a dozen; worth "$25 *or more* apiece."

Indian Rattles (p. 1398, fol. 4177), "six *I believe"; worth "$15 to $25 apiece."*

Alaskan Rattles (p. 1399, fol. 4178), "two," worth "$50 apiece *or more*."

Indian Drums (p. 1399, fol. 4178), "two, worth $200."

Indian War Clubs (p. 1399, fol. 4179), *"Ten or twenty"*; worth "$15 or $20 apiece"

Tomahawks (p. 1399, fol. 4179), "some tomahawks;" "well, a dozen steel tomahawks;" "some of those tomahawks are worth $100 apiece and some $150 apiece, and some others were worth $35 or $30 or $50. I can't tell exactly. I can tell you what I had in the collection; I have told you that before. *I haven't got the time to think about it.*"

"Q. How much were they all of them worth, *at least?* A. $500."

Indian Shields (p. 1400, fol. 4181), "made of buffalo hides, very scarce."

Q. How many of them did you have?

A. I have to think where they were placed *in my room.*

Q. Take all the time you want.

A. Forty.

Q. What were they worth?

A. $100 to $150 apiece.

War Bonnets (p. 1400, fol. 4181), "about the same quantity as the shields; about forty." One worth $300. "Some were worth $100, some $50."

Q. What was the *whole forty* worth?

A. $2,500 or $3,000.

War Shirts (p. 1400, fol. 4182), "Forty" worth "100 *and more* apiece"

Ghost Shirts (p. 1401, fol. 4184), Twen-

ty "supposed to be bullet proof, and worth $20 or $25 apiece."

Scalps (p. 1401, fol. 4184), "Quite a number"; "I *should say* fifteen, about"; "a scalp is worth on an average of $100 apiece; some are worth more and some are worth not quite as much.

Leggings (p. 1401, fol. 4185), "about forty pairs"; worth, "oh, *about* $25 a pair, or $30 a pair; some would be more."

Mocassins (p. 1401, fol. 4186), "250 or 300 pairs *about*"; worth "five or six dollars a pair, on the average."

Lances (p. 1402, fol. 4187), "Two lances; I say they were worth about $500 with scalp and eagle feathers on them."

Dancing Sticks (p. 1402, fol. 4187), two, worth "on an average $150 to $100 for the two."

Dancing Belts (p. 1402, fol. 4188), "I *guess* I had *at least* twenty," worth "*about* $20 or $25 apiece, and more too."

Tobacco Pouches (p. 1402, fol. 4189), "*about* eighty; some as high as $50 apiece"; "$25 some of them."

"Q. What was the value of *the whole eighty?* A. About $20 or $25 apiece."

Game Bags (p. 1402, fol. 4189), "about twenty," worth "something like $25 apiece."

Saddle Bags (p. 1402, fol. 4189), "about ten or twelve; all of them warth $600 *or something like that.*"

Indian Tents (p. 1403, fol. 4190), worth "$175; two *I guess.*"

Squaw Dresses (p. 1403, fol. 4191), "I remember two distinctly, but I think I had more

than that; I think I had four"; worth "$150 apiece or more"; "there was one that I refused $500 for."

Indians Children's Dresses (p. 1403, fol. 4192), "A couple of boy's dresses, and also a couple of little girl's dresses; $50 apiece.

Indian Chief's Suits (p. 1403, fol. 4192, *et seq.*), "one that was very valuable"; "that suit was worth several thousand dollars; at last $3,000; there were many others there; what do you mean? War shirts? There was another one fixed up on the wall with leggings, etc., but I don't remember *whether that was put as a chief's dress.* Is this one put separately.

Q. No; the other one that you spoke of was put separately. Now I am asking you about all the others.

A. I had besides that about forty different complete suits *of which I spoke before.*

Q. Oh, well, I don't speak of those. Didn't you have some complete suits of Indian chiefs?

A. Besides the one I have mentioned?

Q. Yes; besides what you have testified to before.

A. *There was two suits; there was another one.*

Q. What were they worth?

A. This other one, *I presume*, was worth *about $1,500 or something like that.*

Q. Do you remember any other one than that; that makes two special complete suits; do you remember any other?

A. No; *I don't remember* any other.

Cowboy Suits (p. 1405, fol. 4196), two "not worth very much," "one was worth about $25 and I presume my own was worth about $50;" one for my wife, worth about $50."

Buffalo Robes (p. 1406, fol. 4199). "I

thing about two"; worth, "well, maybe $50 for the two."

Scalping Knives and Scabbards (p. 1405, fol. 4197), Two knives with scabbards, ten scabbards, "$10 apiece, knives and scabbards, $25 apiece."

Bows, Quivers and Arrows (p. 1405, fol. 4198), "I *guess about* ten"; there used to be one to every shield; the shield comes here and the quiver and bow and arrow comes under (indicating). That way there would be about forty Some worth $15 and $25 apiece; some $15 and $25"; on the average, $20 or $25 apiece."

Indian Blankets (p. 1406, fol. 4199), "About fifteen"; "one worth $250; there were several others, worth $100, and some were worth $50."

"Q. Was there any that was worth less than $50?

A. I don't think there was any there, no, sir."

Buffalo Robes (p. 1406, fol. 4199), "I had two"; "worth $75 apiece o rmore."

Buffalo Skins (painted) (p. 1406, fol. 4200), "Five, *I believe"*; worth $2,500 to $3,000."

Gun Cases (p. 1406, fol. 4200), *"Well, about ten or twelve"*; worth $20 or $30 apiece."

Wampum Belts (p. 1406, fol. 4201), "I had two;" "worth $75 apiece or more."

Iroquois Earrings and Necklaces (p. 1406, fol. 420 *et seq.*), "I am trying to think of them; I think five or six; there was one there that was worth about $50 apiece; the shells were extraordinarily long; the price, *I think*, is according to the length of the shell."

Q What kind of shell is it?

A. It is a species of *cornea*, and some are worth fifty cents apiece, and some are worth $5 apiece.

Q. How much would all of them be worth?

A. In a necklace like that *I have seen them worth* $100 or $150 or $50.

Q. How much would these be worth on the average?

A. Necklaces and earrings of large Iroquois shells, *an average* of $200 or $250 for the whole of them."

Elk Teeth Necklaces (p. 1407, fol. 4203), "*I think* also about the same number; worth "$500 for the whole of them; some necklaces have about fifty teeth or seventy-five."

Wampum Necklaces (p. 1407, fol. 4203), "I remember two very fine ones, about the others, *I think* there was a couple of others," two worth $150, the other two, "they would be $25 or $30 apiece."

Deer Hoof Necklaces (p. 1407, fol. 4204), "I think there was about the same of those;" worth some $15 to $25 apiece."

Bear Claw Necklaces (p. 1407, fol. 4204), "One especially with very large claws, that one was worth, I should say, about $75; a few others, a couple of others, they were worth about $20 or $25 apiece"

Human Teeth Necklaces (p. 1408, fol. 4205), Two worth "$50 apiece or more; one was worth more than that."

Indian Cradles (p. 1408, fol. 4206). Q. What were they worth?

A. The two together?

Q. Yes.

A. $75; *I should think* the two together would be about $125.

Saddle Cloths (p. 1408, fol. 4207), "I had two saddle cloths worth about $50.

Buffalo Skulls (p. 1408, fol. 4207), "I remember one. It was worth about $25."

Buffalo Horns (p. 1408, fol. 4207), "Three or four pairs *I guess;* four pairs; worth $5 a pair, *about.*

Alaskan Spoons (pp. 1408-9, fols. 4207-8), "I had quite a number of those I believe about fifteen;" worth $2 or $3 apiece."

Indian Horn Spoons (p. 1409, fol. 4208), "I had several Buffalo horn spoons in my collection. I do not know exactly how many I had but I had several. *I had five or six, or more.*

Q. What were they worth?

A..*Anything from a dollar up; some would be worth* $3, $4, $5, or a dollar and a half.

Alaskan Horns (p. 1409, fol. 4209), "Powder horns, yes. There was one; there was two. I had two"; worth "*I think* about $25 apiece."

Indian Skulls (p. 1409, fol. 4210), "I think that would be a couple of hundred dollars; more than that; $250 *I think* I paid for it.

Indian Women's Suits (p. 1409, fol. 4210). Q. Do you remember an Indian woman's suit trimmed with elk teeth? A. Yes, sir.

Q. How many elk teeth were on that? A. Over two hundred.

Q. What was that suit worth? A. $250 to $300.

Buffalo Skins (p. 1410, fol. 4211). Q. Do you remember any buffalo skins trimmed with deer hoofs? A. Yes, sir.

Q. How many of those, A. I had two.

Q. What were they worth? A. One was a unique piece; it was worth considerable money. There

were several hundred hoofs embroidered all over porcupine; a large buffalo, the skin was.

Q. The two would be worth how much? A. Well, I don't know; the other one was *probably* worth a few hundred dollars, but that one was *maybe* worth a few thousand dollars. That one could not be duplicated; that was the finest one that had been seen. An extraordinary value to that piece; it was unique.

Q. How much would the two be worth, fairly? A. Say $2,500. I would not have sold them for that; I would not have sold them for $5,000.

Blanket Belts (p. 1410, fol. 4212). "I had twelve or fifteen of those"; worth some $10, $15, $25 apiece. There was a couple there worth $25 apiece."

South Sea Island Collection (p. 1410, fol. 4212), "masks, lances with carved handles, clubs, sort of idols.

Q. How many different articles in all? A. Oh, I don't know; *I think* I bought that for about $2,000.

Q For the whole collection? A. For the whole collection; $2,000 or $1,800.

Australian Clubs or Boomerangs (p. 1410, fol. 4213), I had *some*.

Q. How much were they worth? A. The whole collection?

Q. Yes. A. *I should say $600 or $700.*

African Collection (pp. 1410, 1411, fols. 4212, *et seq.*), "Lances and assegais. There was two dancing masks used for a sort of medicine dance, and there was some African pipes.

Q. What was the African collection worth? A. $800 to $1,000.

Egyptian Collection (p. 1411, fol. 4214), "That was composed of scarabee and small mummies; I don't refer to the large mummy; I am referring to some small figure which is the diminutive of a mummy; there was two mummified cats; "some turquoises."

Q. What were they all worth? A. About $500 or $600.

Photographic Apparatus (p. 1411, fol. 4215), I had ten or twelve cameras.

Oil Paintings (Vol. III, p. 1411, fol. 4215), "I had some oil paintings, some Indian subjects, a portrait of my child and a portrait of my wife and myself."

Engravings and Miniatures (p. 1411, fol. 4215), "I had a number of oil engravings from what you call the Napoleon epoch, pertaining to Napoleon first, and some ivory miniatures.

Q. What do you put that all worth? A. That collection of oil paintings about $2,000.

Q. And the engravings, and paintings and photographic apparatus? A. I said about $2,000.

Miscellaneous.—Jewelry, silverware, clothing, gold watch, etc. No value put upon them by the witness except the Jurgensen chronometer, which was not in the trunks in controversy, but carried by his wife upon her person.

When the direct examination of the claimant was concluded the petitioner's counsel moved to strike it all out (p. 1413, fol. 4220).

The preceding synopsis shows that the motion should have been granted.

But on cross-examination the claimant showed plainly that his idea of what legal evidence is makes him utterly worthless as a witness.

Being asked how much he paid for some of the articles in controversy, he answered, "I don't count details" (p. 1454, fol. 4343).

His method of purchasing shows that no relience can be placed upon the prices he paid, as a basis for valuation.

Being asked respecting the value of a tobacco pouch which he purchased from an Indian (p. 1467, fols. 4384, *et seq.*), he said:

"I remember that he came with the tobacco pouch in his hand and I asked him how much he wanted, and he told me $10.

Q. And you gave it to him? A. I gave it to him, *of course.*

Q. You did not try to get it any cheaper? A. *Certainly not.*

Again, being asked about the value of an Alaskan boat (p. 1501, fols. 4484, *et seq.*).

"Q. Didn't you testify on your direct-examination what the boat was worth. A. Probably.

Q. How did you form your opinion as to what it was worth if you don't know what was paid for it? A. That has nothing to do with what I paid for it; if I find twenty dollars on the street, is it good for twenty dollars?

Q. Is that the theory upon which you fix your values upon this examination? A. *Not the market value.*

Q. Is that the theory upon which you fix your values upon this examination, that it doesn't make any difference what you paid for the goods? A. I presume not; if I find twenty dollars on the street, is it worth twenty dollars, or one penny; if I buy an article worth twenty dollars and pay one dollar,

am I compelled to sell it for one dollar, or two dollars? If you know anything about it I would like to have your opinion.

Again—Having sworn that he notified the Steamship Company, at the time of sailing, that his goods were worth $100,000, he was asked (p. 1526, fol. 4668):

"Q. I want to ask, if this collection was worth $100,000, why did you only claim $50,000? A. *I may say it was worth $200,000.* There were some articles that you couldn't purchase at any price.

At p. 1580, fols. 4723, *et seq.*, he was asked, and he answered as follows:

"Q. Have you ever figured up how much the list that you furnished to your counsel foots up? A. No.

Q. Don't you know whether it is over or under $50,000? A. I guess about $50,000.

Q. Have you gone over your testimony to see how much in value you have sworn to during your examination? A. I say the collection was worth *a hundred thousand dollars.*

Again (p. 1599, fol. 4779):

"Q. Looking at this picture of your pipes which is the most valuable pipe in that collection? A. I would have to go over them carefully, before I could say which one was; *which value do you mean; there are different kinds of values.*

Q. I didn't ask anything about that; what are the values? A. *There is a value of money, and there is the value in a scientific way.*"

Q. Which is the most valuable pipe in either way? A. Intrinsically?

Q. As a connoissuer, which is the most valuable?

A. As a connoisseur I pronounce this one to be the most valuable.

(p. 1600, fol. 4783).

Q. How much did you pay for it? A. I forget just now what I paid for it.

Q. Can you tell me within a thousand dollars how much you paid for it? A. *I guess from one up to a thousand dollars; anything.*

Claimant's direct testimony must be considered in the light of these statements. It is then shown to be the mere guesswork of an irresponsible, interested, reckless party, whose ignorance, or self-conceit, has saturated him with the idea that his mere say-so should be sufficient for the Court.

But even if the claimant were a decent person and a credible witness, the record is such that he can have no relief.

The Commissioner could not award him a lump sum upon the theory that the goods were worth *something* and were lost.

The result is, that we are confronted with a report which is a mere lumping estimate.

There is no reason why the Commissioner should not, in his report, have taken the list produced by the claimant, and incorporated in the minutes (p. 1567, *et seq.*), and found specifically which of the articles therein enumerated were contained in these trunks.

It must be assemed that the Commissioner understood that he could arrive at his valuation only by legal means. *He must find what was in those trunks.*

Unless he could determine from the evidence what was in the trunks he had no right to approach the question of values.

The preliminary, vital question was, and is "What was in the trunks?"

And we challenge any person to peruse this record and say, and prove, from it what they contaned.

The very frame and form of this report shows that the Commissioner was himself at sea.

He has apparently treated the "trunk" as a unit of value, and not any article contained in any tained.

And so much has he misapprehended the evidence that he reports to the Court that the collection was "contained in about a dozen trunks."

This is a gross exaggeration.

The claimant himself testified (p. 1418, fols. 4136, *et seq.*):

"Q. How many packages were there altogether? A. Well, there were eight or nine trunks, and my wife had a trunk, and I believe there was another trunk; there were probably a dozen trunks."

That is, *in all.* Certainly the woman had one trunk, and probably two.

We have shown how the claimant carefully and persistently separated this trunk or these trunks from those containing the "collection."

The Commissioner has found, correctly, that the trunks containing the "collection" were received on board the vessel as part of the baggage of Mathilde Faivre.

(If he had believed the claimant's story about shipping the trunks as freight, he would have dismissed the claim, because Judge Townsend's opinion brings the case within the provisions of the Harter Act.)

But the petitioner showed beyond controversy that the entire baggage of Mathilde Faivre consist-

ed of eight "colis" or trunks, weighing 952 kilos. The petitioner's baggage list, made up on the morning of the departure of the boat, was produced, and no question was made by the claimant's counsel that it was not a true record of the baggage which Mathilde Faivre took with her.

Therefore the "collection" could not have filled, or been contained in, more than *seven* trunks, in any event, and probably not more than six.

If the learned Commissioner is so far out of the way in the number of trunks, what foundation is there for his estimate of $25,000 as the value of their contents?

Neither the Commissioner nor the Court has the right to award this claimant some lump sum, on general principles.

Yet it is quite clear that in this case the learned Commissioner has found it impossible to arrive at a valuation by items; has included no particular item; has excluded no particular item; and has split the claim in two as the easiest way out of the difficulty.

7.

Upon the whole evidence the claim is transparently magnified, extortionate and fraudulent.

The apocryphal story about the special arrangement for shipment of these trunks as freight; the questionable nature of the relations existing between the claimant and the woman, Mathilde Faivre; the incredible assertion that the petitioner's agent was notified that the trunks contained property valued at $100,000, and thereupon agreed to ship them as freight for the paltry charge of $39; the poverty-stricken condition of the claimant; his inability to pay the trifling rent of his flat; his utterly unbelievable story of the thousands of dollars loose cash lying around in his flat just before shipping the trunks; his statement that the Faivre woman had hundreds of dollars in her pocket at the time of sailing, while at the same time he was making extraordinary efforts to convey $20 to her on shipboard; his glaring perjury with reference to the judgment obtained against him by his landlord; the general character of the claimant's testimony; his inability to remember the date of his first wife's death, or of his second marriage; his deliberate misstatement as to the child's age; his persistent refusal to know or remember, which has stuffed his testimony with 'I don't know" and "I don't remember"; his deliberate failure to make the least attempt to furnish satisfactory evidence of his purchases, sales, etc., etc., his absurd story that Mr. Faguet, Acting General Agent to the petitioner—

its highest official in the United States—personally superintended the labelling of the trunks, and gave claimant his personal assurance that he, Faguet, would "speak to the Captain about it" (what had the Captain to do with it?); his equally absurd reason why Mathilde Faivre (with a baby in her arms) travelled under her maiden name, to surprise her mother; and, finally, his impudent and offensive demeanor at the hearings; all stamp him an unprincipled adventurer, and demand that this claim be thrown out of Court, and the whole proceeding branded for what it is—a shameless and criminal attempt to loot the treasury of the petitioner.

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